Supreme Court, U. S.
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APPENDIX

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. — 75-946

CITY OF MADISON,
JOINT SCHOOL DISTRICT No. 8,
CITY OF MADISON,
VILLAGES OF MAPLE BLUFF
AND SHOREWOOD HILLS,
TOWNS OF MADISON,
BLOOMING GROVE, FITCHBURG AND
BURKE AND ITS AGENT THE
BOARD OF EDUCATION,
CITY OF MADISON
JOINT SCHOOL DISTRICT No. 8
Appellants,

v.

WISCONSIN EMPLOYMENT RELATIONS
COMMISSION and MADISON
TEACHERS INCORPORATED.
Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF WISCONSIN

Jurisdictional Statement Filed January 5, 1976.
Probable Jurisdiction Noted March 1, 1976.

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APPENDIX

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

January 6, 1972 — Complaint filed with WERC by Madison Teachers Incorporated.

January 10, 1972 — Notice of Hearing of February 17, 1972.

February 9, 1972 — Answer filed with WERC on behalf of City of Madison and its Agent Board of Education.

February 16, 1972 — Notice of Postponement of Hearing.

September 13, 1972 — Findings of Fact Cconclusions of Law, Order, Appendix and Memorandum Accompanying Findings of Fact, Conclusions of Law and Order of the WERC.

October 13, 1972 — Petition for Review of WERC Decision by Dane County Circuit Court.

November 28, 1972 — Notice of Appearance and Statement of Position of Intervenor Respondent Madison Teachers Incorporated in Dane County Circuit Court.

December 5, 1972 — Notice of Appearance and Statement of Position of Wisconsin Employment Relations Commission in Dane County Circuit Court.

December 8, 1972 — Notice of Appearance and Statement of Position of National Right to Work Legal Defense Foundation in Dane County Circuit Court.

December 8, 1972 — Petition for Permission to file an Amicus Curiae Brief by the National Right to Work Legal Defense Foundation.

October 5, 1973 — Memorandum Decision of the Dane County Circuit Court dated October 2, 1973.

October 12, 1973 — Judgment of Dane County Circuit Court.

October 19, 1973 — Notice of Entry of Judgment.

November 9, 1973 — Notice of Appeal of Judgment of Dane County Circuit Court to Wisconsin Supreme Court.

June 30, 1975 — Opinion of Wisconsin Supreme Court filed and Judgment of Wisconsin Supreme Court entered affirming the Judgment of the Circuit Court.

July 18, 1975 — Motion for rehearing by Appellants filed in Wisconsin Supreme Court.

September 30, 1975 — Per Curiam Decision of Wisconsin Supreme Court filed denying motion for rehearing.

December 5, 1975 — Notice of Appeal to Supreme Court of United States filed in Wisconsin Supreme Court.

December 15, 1975 — Motion for extension of time to Docket Appeal.

December 24, 1975 — Order granting extension of time to Docket Appeal.

January 5, 1976 — Jurisdictional Statement filed in United States Supreme Court.

January 12, 1976 — Waiver of Right to Participate filed by Attorney General of State of Wisconsin.

March 1, 1976 — Probable Jurisdiction noted.

March 26, 1976 — Application for Extension of Time to File Briefs and Single Appendix.

March 30, 1976 — Order granting extension of time to file Appellants brief and Single Appendix.

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MADISON TEACHERS, INC.
Complainant,

v.

JOINT SCHOOL DISTRICT NO. 8, CITY OF MADISON, VILLAGES OF MAPLE BLUFF AND SHOREWOOD HILLS, TOWNS OF MADISON, BLOOMING GROVE, FITCHBURG AND BURKE, AND THE BOARD OF EDUCATION OF JOINT SCHOOL DISTRICT NO. 8, et al.
Respondent.

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COMPLAINT

The Complainant above named complains that the Respondent has engaged in and is engaging in unfair labor practices contrary to the provisions of Chapter 111 of the Wisconsin Statutes, and in that respect alleges:

1. Complainant, Madison Teachers, Inc. (hereinafter MTI) is a labor organization as defined in Section 111.70 (1) (j), Wis. Stats., having its principal office at 121 South Hancock Street, Madison, Wisconsin, 53703, and at all times pertinent hereto was the certified exclusive collective bargaining representative of all regular full-time and regular part-time certificated teaching personnel employed by the respondent District, including psychologists,

psychometrists, social workers, attendants and visitation workers, work experience coordinator, remedial reading, University Hospital teacher, trainable group, librarians, guidance counsellors, teaching assistant principals (except at Sunnyside School), and teachers on leave.

2. Respondent, Joint School District No. 8, City of Madison, Villages of Maple Bluff and Shorewood Hills, Towns of Madison, Blooming Grove, Fitchburg and Burke (hereinafter the "District") is a City School District operating under Subchapter II of Chapter 120 Wisconsin Statutes, and is a Municipal Employer as defined in Section 111.70 (1) (a), Wis. Stats., with its principal office located at 545 West Dayton Street, Madison, Wisconsin 53703.

3. Respondent, Board of Education of the District, is an agent of the District and is charged with the possession, care, control and management of the property and the affairs of the District.

4. Conferences and Negotiations between the MTI and the Board concerning wages, hours and conditions of employment of bargaining unit teachers for calendar year 1972 commenced on the 25th day of January, 1971, and continued to the 14th day of December, 1971 when full agreement between these parties was reached.

5. During said conferences and negotiations the MTI proposed that the parties adopt a Fair Share Agreement as defined in Section 111.70 (1) (h), Wis. Stats. (1971), and a mandatory subject of bargaining. No agreement was reached by the parties concerning Fair Share until the 14th day of December, 1971 at which time the MTI agreed to withdraw its bargaining demand theretofore made for a fair share agreement.

6. A regularly scheduled public meeting of the Board was held on December 6, 1971. During the course of such meeting the Board permitted Mr. Albert M. Holmquist, a teacher employed by the Board, who is not a member of the MTI, to speak to the Board against the adoption of a fair share agreement despite the fact that Holmquist prefaced his remarks by informing the Board he was a teacher employed by the Board and that he spoke to the Board as the representative of seventy-two teachers employed in forty-nine different school buildings. Holmquist was permitted by the Board to argue against the adoption of a fair share agreement, urging a year's delay in any decision on the MTI's proposal for a fair share agreement, and that all teachers should be polled on the issue and the results of such poll made public.

22 7. Holmquist further presented to the Board written petitions signed by such teachers urging a year's delay in any such decision by the Board which the Board received and accepted.

8. By permitting Holmquist as an individual employee and as the representative of seventy-two of its employees to attempt to influence its decision as concerns a mandatory subject of bargaining the Board negotiated as concerns a question of wages, hours and conditions of employment and a mandatory subject of bargaining with individual employees or groups of employees.

9. By such conduct the Board interfered with and restrained its bargaining unit employees in their right to bargain collectively through representatives of their own choosing in violation of Section 111.70 (2), Wis. Stats. (1971). All in violation of Section 111.70 (3) (a) (1), Wis. Stats. (1971).

10. By such conduct the Board failed and refused to bargain collectively with the MTI as representative of a majority of its employees in violation of Section 111.70 (3) (a) (4), Wis. Stats. (1971).

WHEREFORE complainants pray that an order issue requiring the respondents to:

1. Cease and desist from:

   a) negotiating now and in the future as concerns questions of wages, hours and conditions of employment with individual employees or groups of employees.

   b) interfering with and restraining its bargaining unit employees in their right to bargain collectively through representatives of their own choosing.

2. Take the following affirmative action to effectuate the policies of Section 111.70, Wis. Stats.

   a) Expunge from the official minutes of the December 6, 1971 meeting of the Board of Education, any and all reference to the remarks of Albert M. Holmquist.

   b) Expunge from the official minutes and records of the School District any reference to any written petitions, including such written petitions themselves received by the Board from Albert M. Holmquist on December 6, 1971.

Dated at Madison, Wisconsin, this *5th* day of January, 1971.

/s/ John A. Matthews
John A. Matthews

Subscribed and sworn to before me
this *5th* day of January, 1972.

/s/ Robert C. Kelly
Notary Public, Dane County, Wisconsin
My commission is permanent.

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ANSWER

[Caption omitted in printing]

The Respondents above-named deny that they have engaged in or are engaging in unfair labor practices contrary to the provisions of Chapter III of the Wisconsin Statutes and answering the Complaint in that respect allege:

I

1. Respondents admit the allegations contained in Paragraphs 1, 2, 3, 4, and 5 of the Complaint.

2. The Respondents admit the following portions of Paragraph 6 of the Complaint:

   a. A regularly scheduled public meeting of the Board of Education was held on December 6, 1971.

   b. The Board permitted Mr. Albert M. Holmquist, a teacher employed by the Board, who is not a member of Madison Teachers, Inc., to speak during the public appearance portion of the regular meeting of December 6, 1971.

   c. Mr. Holmquist was allowed to speak at the Board meeting, however, Respondents deny his remarks were addressed solely to the Board.

d. The statement of position of Mr. Holmquist concerned the fair share agreement.

e. Mr. Holmquist prefaced his remarks by informing the Board he was a teacher employed by the Board.

f. Mr. Holmquist prefaced his remarks by stating he was a representative of an informal committee of 72 teachers in 49 schools and wished to inform the Madison Board of Education as he already had Madison Teachers, Inc. about the results of an informal survey regarding one of the 13 or so items then on the conference table and one of the main items that will certainly be included in some form in the new package.

3. The Respondents deny that they permitted Mr. Holmquist to argue against the adoption of a fair share agreement, urging a years delay in any decision on the Madison Teachers Inc.'s proposal for a fair share agreement, and that all teachers should be polled on the issue and that the results of such poll be made public and allege that Mr. Holmquist merely read a petition directed to Madison Teachers, Inc. and the Board of Education and informed the Board of the results of the petition.

4. The Respondents deny the allegations contained in Paragraphs 7, 8, 9, and 10 of the Complaint.

II.

And for a defense to this action, Respondent alleges:

5. On information and belief, Mr. Holmquist is not a minority union member or representative.

6. The remarks of Mr. Holmquist involved solely the giving of a position statement at an ordinary meeting of a public body and thus cannot be labeled as negotiating.

7. Mr. Holmquist was not questioned by the Board of Education during or after his statement.

8. The Board of Education refrained from any discussion or conversation with Mr. Holmquist during and after his statement.

WHEREFORE, the Respondents pray that the Complaint be dismissed.

Dated at Madison, Wisconsin this *8* day of *February*, 1972.

/s/ Douglas S. Ritchie

Subscribed and sworn to before me
this *8* day of *February*, 1972

/s/ Gerald C. Kops
Notary Public, State of Wisconsin
My Commission: *is Permanent*

* * *

PROCEEDINGS BEFORE THE WERC
February 28, 1972

[2] * * *

MR. KELLY: Yes, sir. The Complainant would move to amend paragraph 7 of the Complaint to allege that Mr. Holmquist did not, at that time, present written petitions to the Board, nor did the Board receive or accept any petitions. But, however, Mrs. Doyle, as President of the Board, spoke of the petitions and asked if she could have them and they indicated they would be received by the Board at a later date.

* * *

[5] First, I also move to dismiss because, even assuming that everything occurred in the Complaint and is true, to deny a teacher the opportunity to speak at a public meeting would deny the teacher of her civil rights as guaranteed by the U.S. Constitution, the Wisconsin Constitution and Section 111.70.

* * *

MR. KELLY: We would submit as a joint Exhibit, Joint Exhibit No. 1 by stipulation, the minutes of the Board of Education meeting held on December 6, 1971.

(Document marked for identification as Joint Exhibit No. 1 and was received in evidence.)

[6] MR. KOPS: This is marked as Joint Exhibit No. 2. This is the first page of the agenda for the Board of Education meeting of December 6, 1971.

MR. KELLY: Joint Exhibit No. 3 is the collective bargaining agreement which was in effect from January 1, 1971 through December 31, 1971 between the Complainant Association and the School Board.

(Documents marked for identification as Joint Exhibit No. 2 and Joint Exhibit No. 3 and were received in evidence.)

[7] * * *

It is the Complainant's position, by permitting Mr. Holmquist to speak, and speak as a representative of seventy-two teacher employes in forty-nine schools on fair share, a mandatory subject of collective bargaining, the Board violated its statutory obligations to collective bargaining and it, indeed, interferred, coerced and restrained employes in the right to be represented by a labor organization of their choosing.

* * *

MR. JOHN A. MATTHEWS having been called as a Witness by Counsel for the Complainant and having been duly sworn on oath, was examined and testified as follows:

DIRECT EXAMINATION OF MR. JOHN A. MATTHEWS BY MR. KELLY:

Q Would you state your name for the record, please?

A John Matthews. I'm Executive Director of Madison Teachers, Incorporated. I live at 4806 Academy Drive, Madison.

Q And what are your duties as Executive Secretary of MTI, Mr. Matthews?

A Prepare the official documents for the corporation and act as liaison for the corporation.

[8] Q Do you involve yourself in collective bargaining?

A Yes, I've been a member of the negotiations team since 1968.

Q Were you involved in the collective bargaining that led to a collective bargaining agreement for the calendar year, 1972?

A Yes, I was.

Q And were you aware of any proposals, or a proposal that may have been submitted to the collective bargaining table during that period of time?

A Yes, I prepared the documents.

Q Was there an original proposal submitted to the Board of Education?

A Yes, we exchanged proposals with the Board according to our contract on or about January 2nd, and in 1971 we submitted our proposal in writing to the Board by

letter to the President, Mrs. Doyle, on January 25, 1971.

Q Did that original proposal contain any reference to fair share?

A Yes, it did.

Q And what was that reference?

A We had proposed, knowing of the pending legislation, that the fair share agreement be instituted between the parties and that, I believe, was item number eighteen in our proposal.

* * *

Q I show you what's been marked as Union Exhibit No. 4, which purports to be a letter on the letterhead of Madison Teachers, Incorporated, signed by Mr. Waldman, addressed to Mrs. Ruth Doyle, President of the Board of Education, and ask you if you can identify it?

A This is a letter of transmittal which was submitted with our [9] proposal for bargaining in 1971 for the 1972 contract.

Q I show you what has been marked as Exhibit No. 5 which purports to be a page of proposals and ask you if you can identify that?

A This would be a copy that was taken from my work copy of our proposal which contains the language for the proposed fair share agreement.

* * *

CHAIRMAN SLAVNEY: All right. Exhibits No. 1 through No. 5 will be received.

* * *

[10]Q Did there come a time when your proposal on fair share was changed?

A We changed it, I believe, twice during the bargaining process. We were watching Assembly Bill 198 as it proceeded.

Q When did you change it the first time?

A I believe in October — October 4, 1971.

Q And what were the changes, substance, at that time?

A We attempted to incorporate some of the language as we were following the bill and finally we drafted some changes as to how the fair share would be collected. We had originally based our proposal on language that was not in conformance with the proposed revision of the Statute.

Q When did the second change occur, sir?

A I believe in November.

Q What was that change, in substance?

A We had it drafted following the passage of 198A so that it would conform to that Statute as it amended 111.70.

* * *

(Documents marked for identification as Union Exhibit No. 6 and Union Exhibit No. 7.)

* * *

Q Mr. Matthews, I show you what's been marked as Union Exhibit No. 6 which is headed "Madison Teachers Incorporated, New or Revised Proposal, October 4, 1971" and ask if you can identify that?

A This was the counter-proposal that we submitted to the Board on October 4th. However, on the date we gave it to the Board of Education Negotiation Team, I should point out that there was a line to it that was added after it was submitted to them. Again, that is from my negotiation

notebook and it has the marks on there that would have been made by me during negotiations or in revising it to a later proposal.

Q I show you what has been marked as Union Exhibit No. 7 and ask you to identify that.

[11] A Yes. This is the language which was drafted following the passage of Assembly Bill 198 so that our proposal conformed to the Statute. It was then given to the Board of Education Negotiation Team on that date, November 17, 1971.

* * *

(Documents previously marked for identification as Union Exhibit No. 6 and Union Exhibit No. 7, were received in evidence.)

* * *

Q Is it part of your duties, or do you in the performance of your duties, Mr. Matthews, attend School Board meetings when there are matters which would be relevant to Association business?

A Yes, I do.

Q Did you attend a full Board meeting on December 6, 1971?

A Yes, I did.

Q Was there a matter of Association business that was going to be discussed at that meeting?

A Our President was going to make a statement at that meeting and we had several teachers attending that meeting also — part of some extracurricular activities.

Q Were any other matters that you were aware of that might, or that you had been informed might come up at that meeting?

A No.

Q There were no other matters that were going to come up at that meeting that you were aware of prior to the meeting?

A I was aware that Mr. Holmquist had contacted some teachers requesting their signatures on a document and that he was to present that document to the Board that night.

Q How did that information come to your attention?

A From some of our faculty representatives in various buildings.

Q Prior to the School Board meeting, did you discuss the matter of the petition with any members of the Administration?

A I had discussed it at some time previous to that date with Dr. McGrew and Dr. Sapone.

Q The petition itself?

A No. I discussed the activity. The petition was a document, [12] I believe, which began on or about December 6th.

Q When you say "discussed the activity" what do you mean, sir? What activities?

A The opposition that these gentlemen had to our proposal on the fair share.

* * *

WITNESS MATTHEWS: I discovered their disagreement with our proposal with members of the Administration.

* * *

Q When did you first learn that Mr. Holmquist would address the Board on December 6th?

A On December 6th.

Q Was that prior to the meeting?

A Yes, it was.

Q What time of the day did that come to your attention?

A I believe it was mid-afternoon.

Q And how did that come to your attention?

A Judy Cameron, the Faculty Representative of Gompers School called and later came into the office with one of the petitions that had been sent to her school asking for teacher signatures in that building. And later, Rich Kloiber, who is a Faculty Representative at Sandburg School called to state the same thing. We received several similar calls. Mr. Kloiber stated that it was requested that teachers in his building give their permission for the document to be signed in their name.

Q Did you, at the learning of this event, did you discuss it with any members of the Board of Education?

A I discussed it with Mr. Yelinek.

Q When did you discuss it with Mr. Yelinek?

A I discussed it with him in the parking lot of the Board of Education building as he was going into the building.

Q Who was present at the time of that discussion?

A Joe Mason, a teacher at LaFollette High School, and myself and Mr. Yelinek.

Q And Mr. Yelinek is a member of the Board of Education? Is [13] that correct?

A That's correct.

Q What was the nature of that discussion?

A I had the decision of the W.E.R.C. and the Circuit Court in my hand —

* * *

Q Would you relate what you said or what Mr. Mason said or what Mr. Yelinek may have said during that conversation?

A I had those two decisions that I mentioned.

Q Which decisions are these?

A The W.E.R.C. decision and Judge Maloney's decision from the Circuit Court regarding the Milwaukee School Board — School Director's decision concerning the AFT, speaking in Milwaukee on negotiable items.

Q Go ahead.

A And I had the pertinent sections underlined as I saw them as they related to the proposed appearance by Mr. Holmquist and I asked that Mr. Yelinek read them and he did and I told him what my conern was, that there were individuals other than the agents of the Madison Teachers who were intending to speak that evening on negotiable items and after he read that we discussed them very briefly. I asked him if he could bring this to the attention of the Board or if he thought that I should go in and address the Board myself and he indicated that he would take care of it.

Q Is that it?

A That was it and he went on into the meeting.

Q Did you discuss it with anyone else prior to the meeting?

A I discussed it with Mr. Reed and Mr. Holmquist.

Q And where did that conversation take place?

A It took place initially as I went in to reserve some chairs for our officers and myself in the front of the auditorium because of the number of people who were attending that [14] particular meeting and Mr. Holmquist and Mr. Reed were in the auditorium at that time. I discussed it very briefly with them at that time and they went somewhere — left the auditorium —

Q (Interrupting) Well, let's take that conversation. What did Mr. Reed and Mr. Holmquist say and what did you say at that time?

A Well, I asked them, in particular, what their objections to our fair share proposal were and why they were pursuing it in the manner in which they were and I explained that we had presented the item in negotiations the previous year and had received no objections from anyone. We had the matter that went all the way through into our fact finding at that time and our fact finder stated that the law wasn't permissible at that time. I guess that was about the basis of that particular conversation.

Q And then there was later conversation?

A Yes.

Q And where did that occur?

A This occurred after I went out and got Mr. Mason, as we went back into the building, stopping to talk to Mr. Yelinek and went down to where Mr. Holmquist and Mr. Reed were meeting.

Q Where were Mr. Holmquist and Mr. Reed meeting?

A They were meeting in Dr. Sapone's office.

Q Where is Dr. Sapone's office?

A It's in the Administration Building. He's Director of Curriculum. They were using his quarters for their meeting.

Q Did you, then, go into that office?

A I rapped on the door several times and the door wasn't answered and we later gained access by someone opening the door for us.

Q The door to what, sir?

A To the Curriculum Department.

Q What occurred then?

A Then Joe, primarily, discussed the issue with them then.

* * *

WITNESS MATTHEWS: Joe Mason. Excuse me. He talked to them for quite a while, as did I, and asked them what their intentions were and why they were using this particular [15] forum and I either talked to them at that time, or previous to that time, about the process that we go through in submitting and gaining our proposals from the members and then going back to the membership with written documents to our council and, finally, holding open hearings and we had no objections all through that particular process until the movement was begun by these two gentlemen.

* * *

Q Is that the sum of it?

A Yes.

Q What was the response of Mr. Holmquist and Mr. Reed, if any?

A I know that Mr. Reed stated that they didn't really disagree with the philosophy. They were questioning what a fair share was and the conversation that pursued was if they had that disagreement, why didn't they bring it to the Association rather than using the School Board meeting.

CHAIRMAN SLAVNEY: Were either Mr. Reed or Mr. Holmquist, at the time of this activity, members of MTI?

WITNESS MATTHEWS: Not to my knowledge. I've never checked on their membership. Mr. Kops stated in his document that they were not.

* * *

Q Following that conference, was there a meeting of the School Board?

A Yes, there was.

Q Where was that meeting held?

A In their auditorium at 545 West Dayton.

Q And other than the School Board, were there other members present?

A Three or four hundred teachers present, and press.

CHAIRMAN SLAVNEY: No citizens?

WITNESS MATTHEWS: Yes. There were some other citizens present because some of them made a statement during the open part of the Board meeting under Public Appearances. A clear majority of them were teachers at that time.

[16] COMMISSIONER RICE: They, also, are citizens.

WITNESS MATTHEWS: Yes.

* * *

Q I understand from your answer that there is a portion of the School Board meeting or agenda called Public Appearances. Is that correct, sir?

A That's correct.

Q That evening, did members of the public or did persons make public appearances before the School Board meeting on various issues?

A Yes.

Q Did anyone representing the MTI appear before the School Board there that evening?

A Yes, Mr. du Vair did, the MTI President.

Q Who is Mr. du Vair?

A President of MTI.

Q He made an appearance before the School Board?

A Yes.

Q And it was during the Public Appearances portion?

A That's correct.

Q What was the matter that Mr. du Vair discussed with the School Board?

A Mr. du Vair expressed the desire of MTI to resume negotiations and reach an agreement as soon as possible, stressing that we should do so before the Christmas vacation began and he then presented some documents to Mrs. Doyle.

Q What documents did he present to Mrs. Doyle?

A The petition that was circulated to our membership signed by, I guess, thirteen or fourteen hundred of them.

Q And this was presented by Mr. du Vair as President of MTI?

A That's right.

* * *

CHAIRMAN SLAVNEY: What type of petition?

WITNESS MATTHEWS: The document stated quite simply that "We, the undersigned wish the parties to resume negotiations and reach agreement as quickly as possible."

* * *

[17] CHAIRMAN SLAVNEY: Okay. Has it been established that Mrs. Doyle is President of the School Board? Is that admitted?

MR. KELLY: Yes, yes, sir.

DIRECT EXAMINATION
OF MR. MATTHEWS CONTINUED:

Q Did any other teacher address the Board that evening?

* * *

A No one representing MTI.

Q No. Regardless of who they were representing, did any other teacher speak to the Board that evening?

A Mr. Holmquist did and identified himself as a teacher at Crestwood School.

Q Did Mr. Holmquist speak before or after Mr. du Vair, if you remember?

A He spoke after Mr. du Vair.

Q And what did Mr. Holmquist speak to the Board about? What was his subject?

A Agency Shop.

Q And what remarks did he make? What did Mr. Holmquist say?

* * *

A (By Witness Matthews continuing) Mr. Holmquist stated he was a teacher at Crestwood School and was representing seventy-two teachers in forty-nine schools and that he had a petition of teachers who were concerned. He read through the petition and, basically, that was his statement, that they wanted a year's delay in negotiations on the matter and they wanted the teachers to be polled and a neutral third party — I'm paraphrasing his words now — to conduct the opinionnaire and release the results.

Q Did the Board respond at all to Mr. Holmquist?

A Mrs. Doyle stated that she would receive his petitions, which [18] he did not have at this time, or he didn't have all of them. He didn't have some of them. He wanted time to turn the balance of them in.

Q (By Mr. Kelly) Did any other Board member speak to Mr. Holmquist?

A I don't believe they did.

Q Was that the sum of Mr. Holmquist's statement to the Board?

A Yes, I believe it was.

Q How long would you say his remarks took?

A About five minutes.

Q On the following day did you have occasion to meet the Superintendent of Schools — Superintendent Ritchie?

A Yes, I did.

Q And what was the nature of that meeting?

A It was a bargaining session that, actually, was being conducted not by the regular full teams from each side but by Dr. McGrew and myself and our President and Dr. Ritchie.

Q Did Dr. Ritchie, during that meeting, discuss the School Board meeting the night before?

A Yes, he did.

Q Who was present at the meeting?

A Mr. du Vair, President of Madison Teachers; Dr. McGrew, Superintendent Ritchie and myself.

Q And what did Dr. Ritchie tell you of the activities of the School Board at its meeting the night before?

A He gave us a copy of the motion that was passed by the Board in their Executive Session.

* * *

DIRECT EXAMINATION OF MR. MATTHEWS CONTINUED:

Q Mr. Matthews, I show you what has been marked as Union Exhibit No. 8 and ask you if you can identify that document.

A This is the copy that Dr. Ritchie gave us.

Q And this was given to you at negotiations that particular day?

A Yes. Mr. du Vair and I had met with the other two individuals mentioned, I believe, on three previous occasions and this meeting had been planned — it would

be after the [19] School Board meeting on Monday night, and this was his opening to that meeting and he was saying that this is the deal.

Q This is a short paragraph. Let me read it and see if I read it to you correctly: "It was moved and seconded to accept the total package as presented including arbitration for dismissal of non-probationary teachers and *not* including agency shop; if the MTI does not accept this as a total package, the offer of arbitration is withdrawn." Did I read that correctly?

A That is exactly correct. The "not" was underlined when he gave it to us. This is the document itself that was given to us.

* * *

(Document previously marked for identification as Union Exhibit No. 8 was received in evidence.)

* * *

[20] * * *

Q Mr. Matthews, did fair share continue to be, after December 6th, continue to be a matter that was discussed at the collective bargaining table?

A On December 6th it was discussed and it was discussed on December 7th.

Q Did it continue to be discussed after December 7th?

A I believe we reached agreement on December 7th. On December 6th and the afternoon of December 7th it was discussed quite frequently and the fact that the Administration wanted to revise some of the dismissal and non-renewal procedures and I offered to make that exchange for the fair share.

Q Let me ask this, sir. Did you come to an agreement for the school year, 1972?

A Yes, we did.

Q Was fair share a part of that agreement?

A No.

* * *

Q (By Mr. Kelly) Did you withdraw fair share from the [21] negotiations?

A No, we did not.

* * *

WITNESS MATTHEWS: It wasn't withdrawn in the bargaining. It was withdrawn inasmuch as we reached agreement.

MR. KOPS: Oh, you gave up on it.

WITNESS MATTHEWS: We gave up.

MR. KOPS: Oh, you didn't withdraw it then?

WITNESS MATTHEWS: That's correct.

MR. KELLY: I have no further questions.

CROSS-EXAMINATION OF MR. JOHN A. MATTHEWS BY MR. KOPS:

Q Mr. Matthews, you indicated that fair share was first proposed in January of 1971. Is that correct?

A It was actually proposed in January of 1970 but for the bargaining of 1971 it was proposed in 1971.

Q So, for the bargaining for the '72 agreement, the first time that fair share was presented was January of '71. Is that correct?

A That's correct.

* * *

[22] Q And this matter was discussed in January, then, I imagine, after the proposal was made. Is that correct?

A That's correct.

Q It wasn't agreed upon, was it?

A No.

Q Then, in October it was still on the table and some revisions took place in your proposal. Is that correct?

A That's correct.

Q And did the negotiating team of the Board of Education ever indicate that it agreed to the proposal that was submitted in October?

A No.

Q Now, in November, after the law, negotiations were still continuing on this matter, was it not?

A That's correct.

Q And you said — you placed another proposal on the table, supposedly in conformity with the recent law passed amending 111.70. Is that right?

A That's correct.

Q And this proposal — did the Board indicate, or did the negotiating team indicate that it would or could accept that proposal at that time?

* * *

A (By Witness Matthews) The objection prior to that time [23] had been that the law didn't permit it and this is what the Fact Finder had said the previous year and basing teachers' activity behind 198A, we went ahead and put it in our proposal for the 1971 negotiations toward the 1972 agreement. So, in October I drafted the language that when the law became effective that it would then become effective and Mr. Olson then objected — he was their chief negotiator at that time. Mr. Olson then objected that he wouldn't enter into any permissive agreements. That brings us up to the point.

Q (By Mr. Kops) That's November?

A That was in the middle of October.

Q So the Board, through its chief negotiator, refused to accept the October proposal. Is that correct?

A That's correct.

Q Then the law was passed and you drafted another proposal, supposedly this time in conformity with 111.70. Is that right?

A That's correct.

Q And it was placed on the table in November. Is that right?

A Mid-November.

Q Did you have any meetings or discussions concerning that proposal?

A It was submitted by — I don't believe there were any discussions. There was a flat denial of it.

Q When was the denial?

* * *

CHAIRMAN SLAVNEY: Was it before the December 6th meeting?

WITNESS MATTHEWS: Yes.

Q (By Mr. Kops) So, as of the December 6th meeting the Board of Education did not, at any time, espouse acceptance of the Fair Share proposal. Is that right?

A They had never discussed it in view of accepting it for the 1972 bargaining contract.

Q Would you answer my question.

A Could I have it read back?

CHAIRMAN SLAVNEY: Well, the question was whether or not the School Board ever espoused the acceptance of [24] the Fair Share agreement?

MR. KELLY: To you, did anyone representing this Board ever indicate to you that they accepted it?

WITNESS MATTHEWS: No acceptance for the 1972 contract. They had, several times, said bring it in next year.

Q (By Mr. Kops) And you took that as being a denial of acceptance for the coming year. Is that it?

A (By Witness Matthews) That's correct.

Q And you said they had said this on a number of occasions. Is that right?

A That's correct, following, say, November and December.

Q Did their position — so, their position didn't change after the December 6th meeting, did it?

A It was a flat no at that time.

Q It was a flat no before, too, wasn't it?

A Well, previous to that time, as I said, Mr. Olson said it wasn't permissible by Statute and then we defined the language where it would become effective when the Statute was passed and he wouldn't accept the permissible language so I suppose it was open.

Q Could I have the answer to my question? Just their position — the Board's position after December 6th, was no different than it was prior to December 6th.

[24] * * *

CHAIRMAN SLAVNEY: The position was no different, but the reason for the position was different. Is that right?

WITNESS MATTHEWS: Yes.

CHAIRMAN SLAVNEY: All right.

Q (By Mr. Kops) What were the reasons that the position was different after December 6th, if you know?

A I don't know. They had no reasons other than the motion that was given us.

Q So you don't know if the reasons were different, do you?

A Previous, they were stated that the law did not permit it. Then, after we drafted the language, there was never any discussion by the complete bargaining teams. There was discussion between Mr. du Vair, myself, Dr. McGrew and [25] Dr. Ritchie concerning that but there were no reasons given.

Q So, you don't know if the reasons were any different after December 6th? All I want to do is get an answer to my question in this matter as opposed to before December 6th.

A If I made a statement it would be beyond my — it would be my assumption so I don't know.

Q All right. Now, you say the original fair share proposal was put in in January. When did you first notify your membership that this was the proposal that was being put on the negotiating table?

A Approximately October of 1971.

Q So it wasn't until October of '71 that you gave anybody from your collective bargaining unit an opportunity to express their opinion concerning this matter as an item for negotiations. Isn't that right?

A No. Actually, we had submitted the proposal in our original document which was submitted in January of 1970. That particular year we went through Fact Finding so it had been discussed and had been sent to the membership in 1970. Throughout the year it had been discussed in our Counsel. Previous to that we had taken positions of the Association supporting Assembly Bill 259 which contained a similar provision. We then submitted it

— in September or October we requested items for negotiations from our membership. From that we gathered them in rough form and sent them to all the membership for their review and objection, statements, revisions and so forth and then refined, from what comes back and then it goes back to each member and an open hearing is held at which time we can again revise, remove and so forth.

Q When was that open hearing held for the 1971 negotiations concerning this agreement?

A For the negotiations that took place during 1971?

Q Yes.

A Those hearings are held in November of the year before.

Q So from November until the following October there was no opportunity given to your members to, at least by way of a public hearing, for your collective bargaining members to discuss the fair share agreement or lodge objections. Is that right?

[26] A No, that's not right.

Q When, during 1971, was your membership given an opportunity, as you suggested they were, I think, to express their feelings concerning the fair share proposal that you had in your initial proposal in January?

A Three times a month.

Q All right. You suggested that the membership was not informed until October of 1971 that the fair share agreement was being proposed for the '72 contract. Is that correct?

A I believe that's correct.

Q Now, after October of 1971, was an opportunity given via public hearing?

A No. That wouldn't be correct. You're in 1971. The proposal for that year would have been developed in October of the previous year.

Q So, you're indicating that in October of 1970 your membership was given an opportunity to express their views concerning the proposed package. Is that right?

A That's correct.

Q So, in October of 1970, that was the first time that your membership was aware of the fact that you were going to propose the fair share during the '71 negotiations. Is that right?

A That's correct.

Q Okay, now from October of '70 until October of '71, was there any opportunity given to your membership to — well, did you ever, during this time, present any information to your membership concerning the fair share?

A Yes.

Q When was the first time?

A It would have been in October when we submitted the rought draft of our proposal of the items that came in from the membership, the items that were added by the Council, the Board of Directors and myself.

Q Are we talking about October of 1971?

A Of 1970.

Q I'm talking about from the period of October, 1970 to October of 1971. From that time on, did any communication take part from MTI to the members, giving them information concerning fair share?

[27] A. Yes, I'd have to say so many times it would be ridiculous. Fifty to a hundred times.

Q And these were communications indicating that this was an item that you were proposing for bargaining?

A Yes, through our intended proposal the revisions did not go to every teacher. After it's approved by the Council, it goes to every teacher. When we submit the

proposal to the Board of Education, a copy is duplicated and sent to every teacher, through out support of Assembly Bill 198, through our publication, goes out every two weeks, approximately. That bill was pushed over and over and over and requests made to write to their Assemblymen and Senators with that language in it explaining why we needed that legislation adopted.

Q You are suggesting that these proposals that you submitted in evidence and the updated drafts were sent to all teachers. Is that right?

A That's correct.

Q In other words, every teacher in the system gets a copy of the initial proposals and the updated proposals concerning fair share?

A Everybody in the bargaining unit.

CHAIRMAN SLAVNEY: Even though they're not members?

WITNESS MATTHEWS: That's correct.

Q (By Mr. Kops) Even though they are non-members, they are notified and allowed an opportunity to express their opinions concerning this?

A Yes. When I made the comment, "about three times per month," our Board of Directors meets twice monthly and our Faculty Representative Council, representatives of each building meet monthly with the exception of the summer. Our Board of Directors does meet during the summer. But, anyone in the bargaining unit can speak with the permission of the Council, whether they're a member of the Council or not. No one has ever been denied that privilege.

Q Nobody has ever been denied the privilege to speak — Union or non-Union member?

A That's correct.

Q You send out notices of these meetings to all members of the bargaining unit?

[28] A Yes, we do.

Q These are sent out three times a month?

A We print three thousand of them so that every Administrator, Teacher, Custodian and Cook has one.

Q And you are indicating that nobody, between the entire period of 1971, ever expressed any opposition to inclusion of fair share in the proposed agreement. Is that right?

A That is correct.

Q Not even John Waldman?

A Not as far as it being a negotiable item

Q I'm talking about inclusion of it in the proposal. I'm talking about it from the standpoint of a negotiable item. Did any member of the Board object to the inclusion of this?

* * *

A (By Witness Matthews) He might have made a statement. I'd have to let him attest to that or else review the minutes of the meeting, but there was never any action taken that I can recall.

Q (By Mr. Kops) So, there were people that expressed an objection to the inclusion of the fair share in the proposal to be given to the Board of Education. Is that right?

A No, not to my recollection.

Q No arguments were presented against that inclusion before the Board of Directors?

A I haven't reviewed the minutes but I don't recall any motions taking place.

Q Did anybody appear on behalf of the teachers and argue against the inclusion of this proposal in the negotiating package?

A No, and I can say that because the guests who appear are very few and I don't ever recall anyone else ever speaking.

Q So then it's a fair assumption to make that the Board of Directors and the Council was unanimous in its support of the fair share for the bargaining package for the 1971 agreement?

* * *

[29] WITNESS MATTHEWS: There were no objections that I know of and I don't believe that anyone asked that their vote be recorded as abstaining or voting no.

Q (By Mr. Kops) Now, you met with Mr. Yelinek in the parking lot on December 6th, didn't you?

A That's correct.

Q And you brought the matter of the appearance of Mr. Holmquist or proposed appearance of Mr. Holmquist to his attention. Is that right?

A That's right. That's correct.

Q He didn't know a thing about it, did he, at that time?

A No, he didn't.

Q In fact, he didn't have any knowledge with regard to the petitions, did he?

A He didn't discuss any petitions. He didn't State anything. I can't really say what he knew.

Q He indicated to you during that conversation that he had never met or discussed this matter with Mr. Holmquist?

A No, sir.

Q On the night of December 6th, you communicated that there were about three hundred or four hundred people present in the audience. Is that right?

A Yes.

Q Prior to that meeting, MTI had published a full-page ad in the newspapers, had it not?

A That's correct.

Q And also, prior to that meeting, there was picketing taking place at all the entrances to the Board of Education. Is that correct?

A That's correct. Not all the entrances, no. Not the back parking lot entrance — just on the sidewalk portion.

Q On the sidewalk portion blocking entrance to the parking lot. Is that right?

A No, we didnt' block the entrance to the parking lot. We didn't go across the driveway.

Q Okay. And what time did you arrive at the meeting on December 6th?

A We arrived there, I believe, at 6:00 o'clock.

[30] Q And who did you arrive with?

A I believe I went down by myself. No, I did not. It was with Mr. Schaefer and Mr. du Vair, and I guess that was all.

Q When did you first hear that there was any kind of activity concerning objections to the fair share proposal?

A Primarily on December 6th when the matter of the petition came up.

Q When did you first hear any objections or know that anything was taking place concerning objections to the fair share proposal?

A May I research my file?

* * *

A (By Witness Matthews) We got a letter which was sent to a number of teachers and the postmark is November 14th. This was sent by Mr. Reed and Mr. Holmquist and shortly after that it came to our attention.

Q (By Mr. Kops) All right. It was by letter of November 14th and after that what action did you take?

A We took none.

Q Well, did you seek out Mr. Holmquist and Mr. Reed to see what their objections were to the proposal?

A No. The matter was discussed at our Council meeting which was held later in the month of November.

Q Okay, after you received this letter you took no action as far as contacting them. Did you take any action concerning contacting other teachers in the school?

A What school?

Q Any of the schools concerning this?

A We discussed the matter at our Council meeting in which we have representation from all schools.

Q And what was the nature of those discussions?

A Well, the teachers were pretty hot under the collar and it took some movement to restrain them from interfering in the bargaining process. The people were pretty up-tight. They directed me to see what I could find out as to who was behind this particular letter. It went to a fellow Madisonian educator under the auspices of ecology.

Q Did you, at any time, other than trying to calm the members, seek out these members to see what their objections to the [31] fair share were and bring those to the attention of your Council?

A When you talk about "members," who are you talking about?

Q Well, as I recall you indicated that these Board sessions or Council meetings were really forums for all

teachers and I'm wondering whether or not you invited Mr. Reed or Mr. Holmquist to discuss their objections to the fair share?

* * *

WITNESS MATTHEWS: No, sir.

Q (By Mr. Kops) Would it be fair to assume that you considered this letter an interference with the bargaining process?

A (By Witness Matthews) I believe what we did was to respond to it in a publication. I believe we put out a publication during — the trouble we were having in bargaining in late November or early December — a publication called *Crisis* or *At Issue* and in that we explained the MTI position in this regard.

* * *

Q (By Mr. Kops) Then, after November 17th, when was the next time that you had opportunity to come in contact with the dissenting position concerning fair share?

A December 6th, I believe.

Q So, from November 17th to December 6th nothing occurred on this issue between you and Mr. Reed and Mr. Holmquist. Is [32] that it?

A I never talked with them, no.

Q You never made — between that period of time, did you ever attempt to contact them?

A No, sir.

Q Now, between November 17th and December 6th, did you contact any — well, November 14th, the first time you became aware of this, and December 6, 1971, did you talk with any member of the Administration concerning this?

A Yes, I did.

Q Who did you talk with?

A I talked with Dr. McGrew.

Q When did you talk to him?

A I don't know what the date was.

Q Well, was it after November 17th?

A Yes, it was. The date was on the day a given gentleman had been invited to Madison from Illinois, I believe, to discuss differentiated staffing.

Q That's how you place the time. Is that it?

A Yes. Following that meeting — I had been meeting with the Superintendent and Mr. du Vair was attending the meeting for Madison Teachers and Mr. Holmquist was in this same meeting and I questioned how Mr. Holmquist should be there when they invited members from MIT.

Q All right. You discussed this matter with Dr. McGrew and we don't know the date but it was sometime between November 17th and December 6th. Is that it?

A That's correct.

Q Who else was present during that conversation?

A Mr. du Vair and shortly thereafter, Dr. Sapone.

Q And what was the nature of that conversation?

A I questioned the connection between Mr. McGrew calling me and asking me to have three teachers to represent MTI at this presentation on differentiated staffing and another teacher being there.

Q Well, I'm specifically talking about conversation you would have had concerning this fair share activity — this dissenting activity that was taking place in the schools. Did you talk to Mr. McGrew about that issue at all?

A I questioned the connection between Mr. Holmquist being at [33] that meeting and, in my mind, supporting the Board of Education in their denial of our fair share proposal.

Q And what reply did you receive?

A I received the reply that Mr. Holmquist had contacted them.

Q Contacted them concerning what?

A Wanting a list of the members of MTI — people, apparently, who were on payroll deduction of dues.

Q And what else did you find out?

A Mr. McGrew told me that he didn't give him that data.

Q What else did you talk about?

A We discussed — relative to this I said "How did Mr. Holmquist get to the meeting and why was he released from school" when we were requested to provide the teacher representation and Dr. McGrew answered that he didn't know, whereupon he called Dr. Sapone who was walking down the hall and he responded that he had invited Mr. Holmquist.

Q This was on some other issue other than negotiations? Is that it?

A He had invited Mr. Holmquist to come to that meeting on differentiated staffing.

Q And that was not a negotiation session, was it?

A No, they were discussing a philosophy.

Q Now, was this the only matter that you discussed with Dr. McGrew at that time, simply about the list of members and that was refused by the Administration?

A We battered it back and forth a little bit but what was said was said not seriously and I certainly wouldn't hold him to what was said.

Q All right. Now, after this conference with Dr. McGrew— well, at the conference with Dr. McGrew, since this matter had come to your attention, did you initiate any conversation concerning Mr. Holmquist's position on fair share?

A Not with Dr. McGrew, I don't believe.

Q While you were at the meeting — you were at the meeting with Mr. Holmquist, were you not?

A I wasn't with Mr. Holmquist. Mr. Holmquist returned to his school after that meeting.

Q All right. You were in a meeting. Is that it?

A No, I was not. Mr. Du Vair was.

Q Are you talking about the meeting of December 6th?

[34] A No, I'm talking about the meeting on differentiated staffing.

Q Were you at that meeting?

A No, I wasn't. I had been in a meeting next door with the Superintendent and I went into that meeting following. The meeting was just breaking up.

Q Mr. du Vair was at that meeting?

A That is correct.

Q Mr. du Vair was aware of Mr. Holmquist's position on fair share, wasn't he?

A I'm sure he was.

Q Do you know if he initiated any inquiry of Mr. Holmquist after that meeting concerning Mr. Holmquist's position?

A Not to my knowledge.

Q Okay, now after this meeting was there any other meeting with the Administration concerning the activity by Mr. Holmquist and Mr. Reed with the Administration?

A The topic may have been mentioned in succeeding meetings when we were meeting on other topics but there was no specific meeting to discuss this.

Q So then there was no contact with the Administration or Mr. Reed or Mr. Holmquist until December 6th of 1971. Is that it?

A That's correct, with regard to myself.

Q And on December 6th you arrived at the meeting at about 6:00 o'clock in the evening. Is that it?

A That's correct.

Q What was the first thing you did when you arrived at the school that evening?

A Take the picket signs out of my car and stand them next to the fence.

Q When was the first time that you had occasion, during that evening, to meet with Mr. Holmquist and Mr. Reed?

A After we got our people organized, I went in to place some books and so forth on some chairs so that we would have a position in front of the auditorium.

Q And was it at that time that you came in contact with somebody?

A That's correct. They were in the building at that time — Mr. Reed and Mr. Holmquist.

Q And did you speak with them at that time?

[35] A Yes.

Q In the auditorium?

A That's correct.

Q And what did you say to them at that time?

A I've known Mr. Holmquist since he came to Madison and I exchanged a few hello's and so forth and then —

* * *

A I wouldn't swear to Mr. Reed being there. I belive that he was there. Either that or he came in shortly after that. The two of them were together as they went down the hall and went into the Curriculum Department office. Yes, I believe he did come into the auditorium but they weren't in there at the same time when I arrived.

Q All right. Now, I'm talking about the first conversation you had during that evening and I believe you said it was with Mr. Holmquist and I want to know who was present at that time. Who was present?

A I believe Mr. Holmquist and I were talking and Mr. Reed came in from the back of the auditorium and came down to where we were.

Q And I want to know what you said during that conference concerning this issue.

A I was talking with them concerning their position and asked them what their opposition was and I believe —

* * *

Q And you asked him what the nature of his opposition was? Is that it?

A That's correct.

Q And that was the first time since November 14th that you ever asked him that question?

A That's correct, as far as I can recall.

Q And what was his response?

A His response, I believe, was that they wanted the people — the teachers to have the choice and I went through our process in which we gather items for negotiations and so forth, as [36] I've already explained here and as we went on through it he mentioned something to the effect that he just wanted the people to have a choice.

Q All right. Now, at that time did he indicate to you or talk to you concerning speaking to the Board of Education or attempting to that evening?

A I brought that up.

Q Did he also indicate to you any matters concerning the petition that was being circulated?

A We discussed it, yes.

Q Did he, at that time, give you or tell you what the petition was?

A I had a copy of it. I don't know that he gave me one.

Q Now, that petition was headlined "To: Madison Board of Education and Madison Teachers, Incorporated," wasn't it?

A I don't recall. I could look. I believe I have one.

Q Why don't you look at it?

A Yes, it is.

Q All right. It's directed to the Madison Board of Education and the Madison Teachers, Incorporated, is it not?

A That's correct.

Q Did he ever indicate to you at that time or at that first meeting that he intended to present to you the results of the petition which he was presently circulating?

A Not to my knowledge.

Q You don't recall him making that statement during your first conversation on December 6th?

A No.

Q Okay, and at that time do you recall mentioning to Mr. Holmquist these decisions which you had by Circuit Judge Maloney and the W.E.R.C., I think it was W.E.R.B. at that time, concerning appearances at public meetings?

A Yes, I did.

Q What did you say to them about that?

A I told them that it didn't appear to us that they had the right to appear in that type of forum and I went through the same, underlining the portions of those two decisions that I went through with Mr. Yelinek.

Q Okay, now you did this with both Mr. Reed and Mr. Holmquist at that conference. Is that it, on December 6th?

[37] A I believe, yes, Mr. Reed was there by the time I went through that.

Q All right. You don't happen to know about what time that was, do you?

A A quarter to seven, maybe — seven o'clock.

Q All right. Now, what happened after that first meeting? What did you do after that meeting with Mr. Holmquist?

A I went outside. The first thing I did was watch to see where they went.

Q What did you see?

A I saw them walk down the hall and go into the Curriculum Department.

Q Now, when you saw them go into the Curriculum Department, did they have a key?

A I don't know.

Q Did you see them just open the door and walk in?

A Yes. I don't know if they opened the door. I saw them walk in. The door may have been propped open.

Q Do you know if the door was open or not?

A I have no idea.

Q And when you saw them enter a room in the school, what did you do then?

A I went out and talked to Mr. du Vair and I said I think we need a Witness to the effect that these gentlemen were using the School Board facilities.

Q Have you ever used a phone around the School Board before having permission?

A Have I ever used the phone without permission?

Q Yes.

A I don't believe I have, without asking someone.

Q Do you know if Mr. Holmquist and Mr. Reed had permission to use that room?

A I had know idea.

Q But instead of going to get a Custodian, you went out to talk to Mr. du Vair? Is that correct?

A That's correct.

Q All right. Then after you talked to Mr. du Vair, what did you do?

A I returned to the building with Mr. Mason.

Q So then the three of you came back to the Board building, [38] Mr. Mason, Mr. du Vair and yourself? Is that it?

A No, Mr. du Vair stayed out with the troops.

Q So it was just Mr. Mason and yourself?

A That's correct.

Q And as you returned to the building, is that when you came into contact with Mr. Yelinek?

A That's correct.

Q So it was before you entered the building that you talked with him. Is that it?

A That's correct.

Q I think we've already established that Mr. Yelinek, at least as far as you were concerned, had no idea about this, did he?

A That was my understanding or the impression that I got.

Q And what time was that?

A Shortly after 7:00 — maybe 7:15 or 7:20 or something like that. I had been outside maybe five or ten minutes and went back in.

Q Did you contact any other members of the Board of Education that evening, prior to the meeting of December 6th?

A No, I did not.

Q Between November 14th and December 6th, when you first had any notice of this activity on the part of Mr. Holmquist and Mr. Reed, did you contact any member of the Board of Education?

A I don't believe so.

Q Did you contact any member of the negotiating committee other than Dr. McGrew at that one meeting between November 14th and December 6, 1971?

A I had frequent conversations with Mr. Olson.

Q And those conversations between November 14th and December 6th concerned the activities of Mr. Holmquist and Mr. Reed?

A No.

Q So then this item was not a topic or a discussion between you and the Administration or between you and the Board of Education or between you and Mr. Holmquist and Mr. Reed during the period of November 14th to December 6th?

A I had talked to Mr. McGrew about it.

Q Other than Dr. McGrew?

A No, I don't think I talked to anyone else about it.

[39] Q All right. Then after you had your confrontation with — I don't want to use that word. After you discussed this matter with Mr. Yelinek, what did you next do?

A I entered the building with Mr. Mason.

* * *

[40] Q Now, just a minute. Had you informed your teachers what you thought a fair share was?

A Yes, we had.

Q And that fair share was all of the dues — local, national and statewide. Is that it?

A That was the impression that we had operated under. Some of [41] our Council members questioned that later but that was the official position of the organization.

Q So, proportionate fair share was really the entire dues for unified membership in these three organizations, the MTI, the WEA and the NEA?

A That was the position as we went through it. When the legislation was changed in the legislative process, there was some concern about the wording. As you may recall, it was to be mandatory under the proposed Statute but that was taken out in the Senate.

Q Okay. So that was Mr. Reed's response. What did you respond to that?

A My response was, as I just mentioned, that his issue then should be with the Legislature and not with the organization, Madison Teachers.

Q After that, did you talk at all with Mr. Holmquist?

A I may have, briefly. I don't recall that I did. It was pretty much a four-party conversation. However, at this point Mr. Mason and Mr. Reed were the dominant parties in this conversation.

Q Now, at that time did they indicate to you what their purpose was in the room?

A Yes. They said they wanted a year's delay.

Q No, what their purpose was in the Curriculum room?

A No, they did not.

Q And they indicated to you at that time that they wanted a year's delay or that's why they were present at the meeting that evening?

A That they were going to present this petition of their concern to the Board.

Q Now, at that time they indicated, also, that they were going to present a petition to you. Is that right?

A I don't know that they did. I don't recall them saying that. They wanted a third party to conduct a survey and make the findings public. So, that things addressed to Madison Teachers, I don't ever remember it being pointed out to us that they were going to deliver anything to us.

Q Did you offer them anything, that they would not appear at the Board meeting that evening? Did you offer them — did you make any offers if they would not appear at the Board that [42] evening at the conference?

A We expressed some of our ideas that were, until that point, confidential to the bargaining team and that we needed this as a bargaining tool. The Board of Education had built this as a number one priority and attempted to make the teachers come to the point that there was only one item holding us apart and that was fair share.

Q Now, you're saying the Board of Education, and this is prior to December 6th, had made that —

A (Interrupting) I should retract my statement. Instead of Board of Education, to state Administration.

Q Prior to December 6th the Administration had made this a prime item. Is that it?

A Yes, when this became an issue after we had gone to impasse, the Administration attempted to show that this was an item that was holding us apart. This was the only item — it was Union security. It meant nothing to the members. And when it appeared that — well, I guess it

really surfaced about the time that we went to impasse and this ecology letter came out.

Q So, at any point, as of December 6th, the Administration's position on this item was firm, in the negative, as far as fair share was concerned. Is that it?

A No. It was firm as far as official bargaining sessions went. There was a time when we were told that there were two members of the Board of Education who would approve fair share if we would not push them in the area of final and binding arbitration for non-renewals.

Q You never heard that from the bargaining committee though.

A We heard this from Mr. Olson who represented them. This was never mentioned at any official bargaining session. It was mentioned in a discussion between Mr. Speerschneider and Mr. Olson. Mr. Speerschneider is our Chief Negotiator and was meeting with Mr. Olson in hopes of working out a compromise.

Q As of December 6th, however, I think if I understand your statement correctly, the Board of Education or at least the Administration was firm concerning not agreeing to the fair share.

A The deal that was being made was, there were two principal issues in negotiations at that particular point — that of arbitration of non-renewals and dismissals and that of fair share. We were told that there were two members of the Board who would grant fair share if we would drop our demand for arbitration. Now, all of a sudden the thing turned around. That they would go ahead with arbitration for teachers beyond the probationary period only but would, in no way, grant fair share.

Q And this was acceptable to you and you withdrew your demand for fair share. Is that it?

A It was not acceptable to us and it's still not acceptable to us. We reached the agreement because we didn't feel that the fairshare was the issue to strike over. We had achieved everything else that we wanted with one minor exception on transfers. The fair share was simply nothing to hit the streets for.

Q Did you, in fact, withdraw your demand for fair share to reach an agreement?

A We reached an agreement. We did not withdraw. We never officially withdrew our demand for fair share. We agreed without it.

Q So, as of December 7th, when you reached agreement, you dropped your demand for fair share in return for arbitration of non-renewal of non-probationary teachers. Is that it?

A That's correct.

Q Okay, let's get back to that meeting again with Mr. Reed and Mr. Holmquist. Did you, at any time, offer them anything if they would not appear or present their petition or attempt to speak at the Board of Education meeting that evening?

A As I mentioned, we talked about it being used as a bargaining tool. We wanted the arbitration procedure more because it was an advantage to the membership and we told them, in essence, not to pursue that or we were going to lose the whole ball game.

Q I don't think you've answered my question and I think it's the third time that I've asked it.

A I didn't offer them any bribe or bargain that I can recall.

Q Now, did you, at that time, ask for the information concerning fair share that they had developed?

[44] A No.

Q Were you concerned with what the information that they were developing was concerning fair share?

A I was concerned that it was eroding our bargaining position and many of the members felt that the petition that went out came from Madison Teachers, Incorporated and had indicated to us that that is why they had signed it.

Q Okay, now did Mr. Holmquist or Reed indicate at that time that they would give you a copy of the results of their survey that evening?

A I don't remember that but I had many other things on my mind that evening.

Q All right. Did that end the meeting with Mr. Holmquist and Mr. Reed?

A I believe I've gone through everything that I can recall of that meeting.

Q Okay. Then after the meeting, what did you do?

A I went back out with the pickets and about 7:30 or a quarter to eight we went back into the auditorium and sat through the Board meeting and through Mr. du Vair's presentation and through Mr. Holmquist's presentation and we left.

Q Let's go back to the beginning of the meeting. When you went back into the auditorium to your seat, did you find anything on your seat?

A My books.

Q Did you find the results of the survey on your seat, Mr. Matthews?

A No.

Q You're positive of that?

A Yes. I don't recall it being there, no.

Q Then you listened to the speeches, you said, of both people?

A That's correct, plus there was a lady, I believe, from the League of Women Voters or some such organization.

Q What happened December 7th, after the meeting? You were given this motion that was passed in executive session? Is that it?

A Correct. Mr. du Vair and I had another bargaining session with the Superintendent and the Assistant Superintendent.

Q And during that bargaining session, you entered an agreement on the contract. Is that correct?

[45] A That's correct.

Q That was December 7th, wasn't it?

A That's correct.

Q And in that agreement, or the tentative agreement, you agreed to drop fair share in return for arbitration of non-renewal of non-probationary teachers. Is that right?

A In essence, that's correct. We never really dropped fair share, other than the fact that it was not included in the agreement. We decided that we would take the non-renewals and that was the best we were going to get in view of the motion that was passed by the Board the night before.

Q So there was a contract as of December 7th. Is that right?

A Unofficially, yes.

Q Was there any other negotiations that took place between yourself and the Administration and Mr. du Vair concerning the working out of the contract language after that particular day?

A Yes, there was.

Q And did any of this discussion center around the fair share agreement or the arbitration of non-renewals?

A I think I threw it out again. Yes, I know I did. Somebody was talking about instituting — maybe it was McGrew's MBO concept or something else and I said you could get it for fair share. It was some comment like that. Both sides, I don't think, were serious. It was thrown out to them.

Q So in other words, final agreement wasn't reached until December 14th and fair share was still under discussion, wasn't it?

A That's correct. We still had not signed the document.

* * *

Q (By Mr. Kops) Now, you said you were on the negotiating team since 1968. Is that right?

A That's correct.

* * *

[46] Q That particular Conference and Negotiation section indicates that negotiations are to be closed to the public unless the parties in this agreement agree to the contrary. Is that correct?

A That's correct.

Q It also indicates that no releases about negotiations are to be made concerning negotiations without the consent of both parties. Is that right?

A Reports can be made to the members.

Q Were any releases made to the news media without the consent of the public schools?

A Not before impasse was reached.

Q So, in fact, information was released to the news media without the consent of the Administration?

A Well, I believe that if you go on you'll see that after impasse it's a different situation.

* * *

REDIRECT EXAMINATION OF MR. MATTHEWS BY MR. KELLY:

Q Mr. Matthews, does MTI have an office?

A Yes, sir.

Q How long is that office open?

A From 8:00 o'clock until 5:00, at least, every day and usually later than that.

Q During the office hours maintained by MTI, to your knowledge, did Mr. Reed or Mr. Holmquist ever try and contact you relative to fair share or any other matter?

A No, sir.

Q Mr. Matthews, how does the MTI operate as it concerns its [47] proposals? Does it seek one hundred percent agreement on every proposal?

A No, it's a majority rule.

Q So that very frequently there may be some people who object to a particular proposal?

A That's correct.

Q I believe you testified that there were two items that were in contention — one was arbitration — third party binding arbitration for dismissal of non-probationary teachers and the other one was agency shop or fair share. Is that right?

A Yes, our proposal was arbitration for all teachers.

Q Now, prior to December 6th had there been discussions and negotiations about arbitration of non-renewals?

A Yes, sir.

Q Had agreement been reached on that particular item prior to December 6th?

A No.

Q Had the Board ever offered to give you or to include the arbitration in the negotiated agreement — arbitration for the dismissal of non-probationary teachers prior to December 6th?

A Not prior to December 6th, no.

Q And did you understand on December 7th that the Board, in fact, on that night had changed it's position and had agreed to give you arbitration of non-probationary teachers?

A Yes, sir.

Q But they would not give you fair share? Is that right?

A That's correct.

Q So to that extent the Board made a change and they made it at December 6th at that Executive Meeting. Is that correct?

A I assume that that's when they made it, yes. * * *

[48] Q Superintendent Ritchie gave you this particular document, as typed, and told you that this was passed by the Board of Education during the meeting of December 6th?

A That's how the meeting was opened the following day. He handed us the document as it is typed and submitted.

Q Would you mark this, please?

* * *

Q Mr. Kops questioned you about a letter you received on November 14th, I believe. Now, I show you what is marked as Union Exhibit No. 10 and ask you if you can identify that.

A This is a letter which there was a direct mailing through the U.S. mail received by most teachers in the

City, apparently, and it says "Dear Fellow Madisonian Educator." This is a copy I got from one of the members of our bargaining unit.

* * *

(Document previously marked for identification as Union Exhibit No. 10 was received in evidence.)

* * *

Q Mr. Matthews, to date have you ever received from either Mr. Reed or Mr. Holmquist a copy of any petition — excuse me, a copy of any petitions?

A No.

Q Have you ever received any data showing the results of the survey conducted by them?

A No.

Q Have you received any information from them?

A No.

Q This petition headed "To: Madison Board of Education and Madison Teachers, Incorporated," dated December 6th that [49] Mr. Kops spoke about, have copies of that petition been given to you or to any member of MTI, to your knowledge?

A A lot of members of MTI got them.

Q I'm talking about when they were filled in and completed.

A No. I received one from one of our faculty representatives on December 6th. That's the last time I've seen it.

Q But the results weren't on it?

A No.

Q I have no other questions.

RECROSS-EXAMINATION OF MR. MATTHEWS BY MR. KOPS:

Q Mr. Matthews, you were present at the meeting where Mr. Holmquist spoke. Is that correct?

A December 6th, yes.

Q And after Mr. Holmquist spoke on December 6th you met with — well, strike that. And you also heard what Mr. Holmquist — the results of that survey that Mr. Holmquist presented at that meeting. Is that right?

A That's correct.

Q And then December 7th you met with the Board of Education, Superintendent Ritchie and Dr. McGrew. Is that correct?

A That's correct.

Q And then after that meeting you agreed to drop your fair share agreement proposal. Is that right?

A I have answered that.

Q Did you or didn't you? You can answer it again, I imagine. Is that right?

A We came to an agreement without it.

* * *

Q You indicated that you haven't received any data from Mr. Holmquist or Mr. Reed. Is that right?

A That's correct.

Q You were present at the meeting on December 6th, weren't you?

A That's correct.

Q And you heard what they had to say concerning the results of their survey. Is that right?

[50] A I heard what they said.

Q And you heard exactly what the Board of Education heard on December 6, 1971 from these people. Is that right?

A That's correct.

Q And then on December 7th you made a tentative agreement with the Board of Education absent a fair share agreement?

A That's correct.

Q Would it be fair to say that the information developed by Mr. Holmquist and Mr. Reed changed your position concerning fair share?

A No, sir.

Q From January of 1971 until October of 1971, did you conduct any poll of your membership concerning the fair share agreement?

A Not between those dates.

Q Did you, after the new law was amended, from October to December 6th, conduct any poll concerning fair share agreement of your membership?

A Would you repeat the question, please?

Q From October of '71 to the time when you reached agreement on the contract with the Public Schools, did you conduct any poll of the membership concerning the inclusion of the fair share agreement in the bargaining proposal?

A It was already in the bargaining proposal — in the bargaining package. It was already in the bargaining package.

Q Did you conduct any poll as to whether or not it should have been removed from the bargaining package of your membership?

A No, sir.

Q I have nothing further.

MR. KELLY: One question, Mr. Matthews.

* * *

[51] Q Mr. Matthews, I've asked that you be recalled because I wished to ask you some questions about what occurred during and after Mr. Holmquist's talk at the Board of Education. When Mr. Holmquist was talking, was he interrupted by any members of the Board of Education?

A Not to my knowledge.

Q Did any member of the Board of Education ask any questions during this talk?

A I don't believe so.

Q Did any member of the Board of Education attempt to stop his talk, to confer with him about what he had to say about the fair share?

A No.

CHAIRMAN SLAVNEY: Was it a unilaterial discussion?

WITNESS MATTHEWS: As they always are. The Board doesn't stop anybody in the Public Appearance section.

Q (By Mr. Kops) Did Mr. du Vair talk also, prior to Mr. Holmquist?

A Yes, sir.

Q During his talk, did anybody ask any questions?

A No, sir.

Q Are you positive of that?

A I don't believe they did. I don't recall that they did.

Q Are you suggesting that no member of the Board of Education asked any questions during the Public Appearance section?

A I don't recall that they did.

Q So then your previous statement is incorrect.

A What previous statement?

Q Whether or not questioning ever occurs in the Public Appearance section.

A It would be a rare occasion that anyone would question during the Public Appearance section until they had finished their presentation.

Q In fact, you don't remember if any questions were asked by [52] any members during the Public Appearance section that evening. Is that right?

A I don't recall that any questions were asked.

Q All right. Now, after Mr. Holmquist finished his presentation, did Mr. Calhoun ask him any questions concerning his presentation?

CHAIRMAN SLAVNEY: Is Calhoun a School Board member?

MR. KOPS: Yes, he is.

A (By Witness Matthews) I don't remember. Not that I recall.

Q Did Mr. Yelinek ask him any questions after his presentation?

A Not that I recall.

Q Did Mr. Marcus?

A None of them did, to my knowledge. Mrs. Doyle stated that she would receive the petitions. That's all she said.

Q Did any member of the Board of Education enter into any conference after Mr. Holmquist's presentation, with Mr. Holmquist?

A Not in the Public Appearance section.

* * *

Q Madison Teachers, Incorporated, during these negotiations with the School Board, did they ever reach impasse?

A Do we ever reach impasse?

Q Did you ever reach impasse in the previous negotiations?

A Yes.

Q When did you reach impasse?

A I don't recall the date.

* * *

[53] Q So, during this period in question, November to December 6th, you were in a position where the parties had reached impasse concerning negotiations for the '72 agreement?

A That's correct.

Q And during this particular time, were you responsible for preparing and distributing to the members of your bargaining unit a document entitled *At Issue?*

A Yes. I testified to that earlier.

Q And I show you — is this a copy of the *At Issue* issue of November 18th?

A Yes.

Q Could I have it marked?

(Document marked for identification as Employer's Exhibit No. 11.)

* * *

Q Now, in the body of this particular document, there is a paragraph — the third paragraph, which reads as follows: "The Administration is attempting to split Madison Teachers' membership by stating the only issue is Fair Share (Agency Shop)." Now, is that a correct reading of that statement?

A That's one sentence of it within the body of the document.

* * *

[54] CHAIRMAN SLAVNEY: Employer Exhibit No. 11 is received. What's the date of that document?

* * *

(Document previously marked for identification as Employer's Exhibit No. 11 was received in evidence.)

* * *

[55] Q I ask you to identify Exhibit No. 12. Is this a facsimile of the *At Issue* issue of November 24, 1971?

A Yes, sir.

* * *

(Document previously marked for identification as Employer's Exhibit No. 12 was received in evidence.)

MR. KOPS: I also would like to have this marked.

(Document marked for identification as Employer's Exhibit No. 13.)

* * *

Q I ask you, Mr. Matthews, is this a facsimile of the *At Issue* issue of December 2, 1971 — I move that this be admitted also.

* * *

WITNESS MATTHEWS: It's one that we produced. I suppose that the date is correct. I haven't looked at that lately. I suppose that that's correct.

* * *

(Document previously marked for identification as Employer's Exhibit No. 13 was received in evidence.)

* * *

Q Now, Mr. Matthews, in this particular *At Issue* document there is a question, "Why does the Administration insist there is only one unresolved issue when there are in fact 13 viable issues in present contract negotiations?" What was that "only one" unresolved issue that the Administration was insisting on?

A Fair share.

Q So, as of December 2nd the Board's position, as you indicated [56] here, was that there was only one unresolved issue and that was Agency Shop?

A That is correct.

Q Were any other *At Issue* documents prepared between December 2nd and December 6th?

A About one every day.

* * *

REDIRECT EXAMINATION OF MR. MATTHEWS BY MR. KELLY:

Q Mr. Matthews, I show you what has been marked as Union Exhibit No. 14 which appears to be *At Issue* for —

A Yes, this is a publication of Madison Teachers underlining [57] the items still viable in negotiations.

Q And *At Issue* is sent to whom, sir.

A It is sent to all members of the bargaining unit.

Q All members of the bargaining unit?

A Yes.

* * *

(Document previously marked for identification as Union Exhibit No. 14 was received in evidence.)

* * *

Q Does the Madison Teachers publish any documents besides *At Issue?*

A *At Issue* is just used during a crisis, specifically for relating events relative to that period of time.

Q Is there any other?

A We publish a newspaper called *The Merrimac* and a periodical, a one or two-page document called *The Reporter.*

Q Who is *The Reporter* sent to?

A It's sent to all members of the collective bargaining unit.

Q Mr. Matthews, I show you what has been marked Union Exhibit No. 15 entitled *The Reporter,* Volume 5, No. 7 and ask if you can identify that for the record?

A Yes, this is the issue that was printed for distribution on November 15th.

Q So this issue was printed for distribution on November 15th and was sent to who?

A All members of the collective bargaining unit.

Q The first paragraph in here is entitled "MTI BRINGS ISSUES TO YOU." What was the purpose of that paragraph?

A This followed an impasse and dispute that arose between Madison Teachers and the Board of Education so we scheduled members of our bargaining committee and our Board of Directors to go to each school to present our position on both issues.

Q Is one of the issues that would have been discussed, fair share?

A It certainly would have been.

* * *

[58] (Document previously marked for identification as Union Exhibit No. 15 was received in evidence.)

* * *

Q What is a Faculty Representative Council?

A It's a body which is made up of the Faculty Representatives from each school who are elected by their school by the members of Madison Teachers in their school on a proportionate basis to the number of members in the building.

Q And what is the job of a Faculty Representative in a particular school?

A They serve as the Representative of those individuals to the official policy-making body of the organization.

Q I show you what has been marked as Union Exhibit No. 16 which purports to be the minutes of Madison Teachers, Incorporated Faculty Representative Council of November 22, 1971 and ask if you can identify that for the record?

A This is a copy of the minutes which were sent out following that meeting.

Q These minutes show that, I quote, "Matthews explained the Fair Share and the Right to Read proposals," et cetera. What particular action of yours are those minutes reviewing?

A I don't understand your question.

Q Well, this describes that you're doing something. What were you doing?

A We reviewed our position in negotiations as it was and there were questions asked — the circulation of the letter from Mr. Holmquist and Mr. Reed under the auspices of Ecology and it brought about many questions in people's minds so we went through and explained what fair share was.

* * *

(Document previously marked for identification as Union Exhibit No. 16 was received in evidence.)

[59] * * *

Q I show you what's been marked as Exhibit No. 17 which is the minutes of Madison Teachers, Incorporated Faculty Representative Council of November 16th and ask you if you can identify that?

A This has to do with the Council meeting which was held at LaFollette. This was a regular Council meeting and the minutes of that particular meeting.

Q All right. What do those minutes indicate relative to Mr. Holmquist?

A There were various questions asked of us concerning the letter which was sent out by Mr. Holmquist and Mr. Reed and the Representatives asked various questions of us and this is a summary of what took place.

Q In other words, that's a summary of what took place at the Faculty Representative's Council relative to the Reed-Holmquist letter of November 14th? Is that correct?

A That's correct.

* * *

(Document previously marked for identification as Union Exhibit No. 17 was received in evidence.)

MR. KELLY: I have nothing further.

MR. KOPS: Just one question concerning the minutes of November 22nd. When were they distributed to the membership?

WITNESS MATTHEWS: I couldn't say specifically. The minutes of the Faculty Representative Council go to

all members of the bargaining unit as soon after the meeting as possible but that meeting was a very short meeting and I assume they went within a couple of days.

MR. KOPS: Could it be that the minutes of the 22nd where the fair share was explained was distributed after agreement on December 8th?

WITNESS MATTHEWS: I wouldn't think so.

MR. KOPS: You don't know, though?

WITNESS MATTHEWS: Our practice is to distribute them as quickly after the meeting as possible and at that time I couldn't say for sure, but from the length of them I don't think it would take that long.

[60] * * *

MR. KELLY: Mr. Speerschneider.

MR. JAMES E. SPEERSCHNEIDER having been called as a Witness by Counsel for the Complainant and having been duly sworn on oath, was examined and testified as follows:

DIRECT EXAMINATION OF MR. JAMES E. SPEERSCHNEIDER BY MR. KELLY:

Q Would you state your name for the record?

A James E. Speerschneider.

Q Are you employed, Mr. Speerschneider?

A I'm a Counselor at Memorial High School.

Q Are you involved in any activities of the Madison Teachers, Incorporated?

A I'm presently a member of the Negotiating Team and at the time this contract was negotiated, I was Chairman of the Negotiating Team.

Q How long were you Chairman of the Negotiating Team?

A Two years.

Q Did you serve as Chairman of the Negotiating Team during the negotiations that led up to the 1972 contract?

A Yes.

Q When did those negotiations start, to the best of your knowledge?

A About Janaury 25th — I guess somewhere around there.

Q Did you submit to the Board of Education, at some time, a written proposal to be considered at the bargaining table on behalf of MTI?

A Yes.

Q Was a part of that proposal fair share?

A Yes, number eighteen.

Q As Chief bargainer, when did you conclude that fair share was definitely denied and would not be part of the contract arrived at for 1972?

A December 6th or 7th when I got — December 7th when I got a report back from John that a potential agreement had been reached.

Q Who comprises, or who do you deal with on the other side of the — who's Chairman of the Board's team?

[61] A Paul Olson.

Q At any time prior to December 6th, was there indication that the Board was flexible on the issue of fair share?

A Yes, there was. When we got near impasse and asked for mediation, Paul and I met one evening over at Midvale School.

Q By "Paul" who do you mean?

A Mr. Olson, to see if the two Chief Negotiators might not work out some kind of compromise position. We

discussed very candidly the issues that were at hand and what might be given by both sides. Unofficially, at that time, Paul indicated to me that he could see no way in which binding Arbitration for non-renewal and dismissal would be granted by the Board of Education but that there would be a distinct possibility that Agency Shop could be granted by the Board of Education.

Q Did you attend a meeting of the Board of Education in a regular meeting held on December 6th?

A Yes, I did.

Q Were you there during that portion heretofore noted as Public Appearances?

A Yes.

Q Did you hear Mr. Holmquist speak during that period of time?

A Yes, I did.

Q How long would you say he spoke to the Board?

A A short period of time — less than ten minutes. I'd say maybe about five minutes.

Q What, to the best of your recollection, did Mr. Holmquist say to the Board on that occasion?

A That he was representing some teachers and submitted a petition to the Board, or at least said he had a petition in his hand which he was going to submit at a later date asking for a postponement of Agency Shop — a study, sort of a year moratorium on it.

Q As Chief Negotiator for MTI, do you involve yourself in the strategy of the collective bargaining process?

A Very definitely.

Q As Chief Negotiator for MTI, what was your feeling after that particular meeting?

* * *

[62] A (By Witness Speerschneider) I thought it was the most damaging thing to our strategy that could occur or that had occurred in the last two years that I was Chairman.

Q (By Mr. Kelly) Why did you feel that way?

A It underminded the strategy that we were attempting in order to obtain, in negotiations and collective bargaining, the end results of a certian contract that we wished to have. It hurt us drastically.

Q Did any other teachers that were present that night express themselves to you relative to this matter?

A Yes. Several teachers, although I couldn't recall their names that evening, and the next day in school, approached me indicating that it was the thing that obviously hurt our position in bargaining.

* * *

CROSS EXAMINATION OF MR. SPEERSCHNEIDER BY MR. KOPS:

Q Mr. Speerschneider, when did this meeting with Mr. Olson occur?

A I would say the latter part of October or the early part of November.

Q That was before fair share was legal, is that it?

A Yes, but it looked like 198A was just about sure to pass.

Q Subsequent to that meeting, did Mr. Olson meet with the Board of Education?

A Yes.

Q And as a result of the meeting of the Board of Education, were there any communications distributed to you?

A Yah, they turned down — we had some seven or eight items that we thought we could reach agreement on. Together they turned down something like four to six of them.

Q When did that occur?

A Within a week after that meeting.

Q All right. Now, that happened in October. Is that it?

A October or early November.

Q All right, and within a week of that meeting if it was late October or early November, you had an answer from the Board of Education indicating that fair share was out. Is that right?

A Right.

[63] Q So, this Mr. Olson's conclusion concerning the position of the Board of Education with regard to the fair share was incorrect. Isn't that right?

A Yes, and with regard to binding arbitration also.

Q So, in other words, there appeared at least as far as early November was concerned, that the fair share was not a possibility for inclusion in the negotiated agreement for '72. Is that right?

A I really couldn't say that. When you're in negotiations and working things, a lot of times "no" comes up when they mean "yes" and his indication to me in private was that there was a far better chance for fair share than there was for binding arbitration.

Q All right. However, prior to November 6th and even prior to the fair share portion of the legislation in '71, you knew that both binding arbitration and the fair share were refused by the Board of Education?

A We knew a lot of things were refused by the Board of Education that we eventually got in the bargaining process. That's normal.

* * *

A (Interrupting) I think there were a lot of other things that they turned down that they eventually came up with so that's a part of bargaining. That's not an absolute yes or no answer.

Q You met with Paul Olson in late October or early November?

A Yes. He indicated at that time that he thought that fair share was a possibility. Is that correct?

A Right.

Q Then, subsequent, about a week after that meeting, you were given the answer concerning his proposal to the Board of Education. Is that right?

A That's correct.

Q And that answer was a denial of fair share, was it not?

A That's correct.

Q Okay. Now, was Mr. Waldman a member of your negotiating team?

A No.

Q What was his position in November of this year with MTI?

[64] A A member of the Board of Directors, I believe.

Q And he was a member of the Board of Directors during the entire negotiating session?

A When we submitted the original document for negotiations, I believe he was President of MTI.

Q I see, and then you changed over Presidents after that date?

A Yes.

Q I imagine Mr. Waldman also thought that this Agency Shop was a vital issue in negotiations. Is that right?

A I couldn't answer for Mr. Waldman. Ask him.

Q Do you know?

A I don't know.

Q You indicated also that this five-minute statement by Mr. Holmquist was the most damaging of anything that had ever happened during negotiations to your strategy, at least in the time that you've been on the negotiating team. Could you explain to us how it damaged your strategy?

A Do I have to answer that? I think that involves a tactic that we were using at that time and I'd hate to go into that unless I have to.

* * *

Q (By Mr. Kops) All right. Would you answer the question?

A (By Witness Speerschneider) We were attempting in negotiations, to indicate which items were of very great importance to us and of primary importance to us where binding arbitration and non-renewal and dismissal, the second most important item to us, was Agency Shop. We had settled several other items — salary and other items like this and we had a whole bunch of things settled but it didn't make much difference and these were the two important items.

We wanted the Board, at all times, to understand that the most important item, as far as we were concerned, was [65] Agency Shop and not the other one. They bought that. Then, when Mr. Reed and Holmquist got up and made the statement they cut our most important strategy element right out from under us.

Q I still am not clear as to how they cut your strategy out from under you.

* * *

WITNESS SPEERSCHNEIDER: Our agreement with the Board of Education indicates that they will negotiate with me and my team and no one else and when they listened to them, they were negotiating with them and someone else and I objected.

* * *

CHAIRMAN SLAVNEY: Now, there are some teachers in the school system that are not members of your organization. Is that right?

WITNESS SPEERSCHNEIDER: That's right.

CHAIRMAN SLAVNEY: And they are not on dues check-off. Is that right?

WITNESS SPEERSCHNEIDER: Right.

CHAIRMAN SLAVNEY: Would this give the School Board knowledge as to which of its teachers are members of your organization and which are not?

WITNESS SPEERSCHNEIDER: I think they know that already.

* * *

Q Mr. Speerschneider, check-off is not the only way that dues are paid, are they?

[66] A No.

Q So, people can pay their dues directly to MTI?

A Correct.

Q Instead of being checked off?

A If they like, right.

Q So check-off would only indicate — or, be a partial listing of members. Is that it?

A Yes.

* * *

Q Mr. Speerschneider, after you heard the statement made by Mr. Holmquist, was there some statement in your mind as to whether or not the membership of the bargaining unit indeed wanted fair share in the agreement?

A Total membership?

Q Well —

A There was some question in my mind at all times that everyone wanted fair share.

Q All right. Now, after you heard Mr. Holmquist talk, did it appear to you that perhaps a dissent concerning fair share was greater than what you anticipated?

[67] A No. He never presented any signatures to me and the Board of Education never presented any signatures to me. All I have is his figure of some seventy-odd people had signed it.

Q After he made the statement at the December 6th meeting, did you think it would be wise for MTI to poll the membership concerning fair share?

A Um-um, because the law reads they have to vote on it and we need something like sixty percent before it goes in and that would be the poll.

* * *

Q Now, Mr. Speerschneider, are you indicating that this talk of Mr. Holmquist's strengthened the Board's position or weakened your position?

A Both.

Q Were you aware of your membership? Did the membership express to you, or after this conference, dissatisfaction with the fair share proposal? After the December 6th meeting did any teachers in the bargaining unit which were members of MTI suggest a change in MTI's position concerning fair share?

A Oh, I couldn't recall before or after. I just couldn't answer that.

Q So, your conclusion with regard to what effect this statement had is not based on any empirical evidence concerning your membership but only a feeling on your part, is that it?

* * *

A (By Witness Speerschneider) You asked me my opinion and [68] at that time I gave you my opinion.

Q (By Mr. Kops) But there was no feedback from your membership concerning this issue after Holmquist spoke?

A I really can't recall that because we reached settlement on the 7th or 8th, the settlement was in and we had it out. I'll retract that. Immediately after the meeting, the next morning at school teachers talked to me about it indicating that it did damage.

Q How did they indicate to you that it did damage?

A I had talked to them concerning negotiations. They knew something regarding negotiations as members and they realized that it hurt when part of the group jumps up front and chops off what you're asking for.

Q Now, who were these people that talked to you December 8th?

* * *

[69]Q Mr. Speerschneider, during Mr. Holmquist's talk, did any member of the Board of Education interrupt and engage in a discussion with Mr. Holmquist?

A I don't believe so but I'd have to go to the minutes. I don't think so.

Q After the talk of Mr. Holmquist, did any member of the Board of Education engage in a dialogue with Mr. Holmquist concerning the results of the survey he conducted?

A Again, I don't know. Not to my knowledge.

Q Is Mr. Holmquist a member of MTI?

A I have no idea.

Q Do you know if Mr. Holmquist is a member of a minority Union?

A I have no idea about that either.

* * *

REDIRECT EXAMINATION OF MR. SPEERSCHNEIDER BY MR. KELLY:

Q Did Mrs. Doyle speak after Mr. Holmquist spoke to this issue, to your knowledge?

A Yes, I believe she made some comment to the extent that she would receive or accept the petitions when he had them.

* * *

* * *

[70] MR. KOPS: Do you recall any other person making a comment?

WITNESS SPEERSCHNEIDER: A lot of teachers. I was in the audience.

RECROSS-EXAMINATION OF MR. SPEERSCHNEIDER BY MR. KOPS:

Q What comment did the teachers make after Mr. Holmquist spoke?

A Many of them were disturbed.

Q Well, was this noticeable during the meeting?

A No. They were very polite at that time.

Q Now, just a minute. You said there were many teachers who made statements or made comments.

A Two or three of the bargainers were sitting next to me and made comments to me about it and a couple of other teachers in the room said something to me about it.

Q There was no general uproar or anything at the meeting after Mr. Holmquist talked?

A There was no general uproar at any time. They were very polite at that meeting.

* * *

[71] MR. KOPS: I'll call Albert Holmquist.

MR. ALBERT HOLMQUIST having been called as a Witness by Counsel for the Respondent and having been duly sworn on oath, was examined and testified as follows:

* * *

Finally, also I move to dismiss with the same argument that a denial by the Board of Education of allowing a citizen of the United States and also a teacher to state his position concerning the fair share — state a position to the Board of Education and Madison Teachers, Incorporated. To prevent them would be a violation of an individual's civil rights, specifically United States Constitution, Article I, and the Wisconsin Constitution and, [72] the new law, 111.70.

CHAIRMAN SLAVNEY: We will reserve ruling on your motion.

DIRECT EXAMINATION OF MR. ALBERT HOLMQUIST BY MR. KOPS:

Q Would you please state your name?

A Albert M. Holmquist. I reside at 5626 Crestwood Place, Madison.

Q And by whom are you employed?

A I'm employed by Joint School District #8, Madison Public Schools.

Q And are you a member of Madison Teachers, Incorporated?

A I am not presently a member of Madison Teachers, Incorporated. I'm an ex-member of Madison Teachers, Incorporated.

* * *

A (By Witness Holmquist) I'm not a member of Madison Teachers, Incorporated. I was, at one time, a member of Madison Teachers, Incorporated.

Q Are you a member of the American Teachers Federation?

A I am not.

Q Are you affiliated with any labor organization which presently has members in the Madison Public Schools?

A No.

Q Mr. Holmquist, you made a statement on December 6, 1971 before the Board of Education concerning the fair share agreement. Is that right?

A That's correct.

Q Now, prior to that statement before the Board of Education, when was the first time that you became involved with the fair share issue?

A I became aware of it in late September or early October.

Q And how did you become aware of it?

A The MTI Faculty Representative at the school was badgering me about why I wasn't a member and at that point — and during one of these conversations — they were numerous, the issue of fair share was brought up and that's my first recollection of being involved in this at all.

Q All right, when was the next time that the matter of fair share — that you became involved in the matter of fair share?

A In conversations with Mr. Reed.

Q When did that occur?

[73] A These were in the first weeks of October.

Q And where did that occur?

A That occurred at his home, at mine and at a class we were both taking — after a class.

Q And out of these discussions, what occurred?

A Out of these discussions we came to the conclusion that Madison teachers were very confused about what Agency Shop, Union Shop, fair share might be.

Q And on what basis did you come to the conclusion that teachers might be confused concerned this?

A The very limited basis of speaking to the faculty members at the schools we are both employed at.

Q And could you specify the nature of this confusion and what resulted from your conversations with these representatives?

A The confusion stemmed from the definition of what each of these terms actually meant. The common understanding of fair share that I found was in my own faculty — was that each member would pay a certain proportion of the local dues to the local organization and this constituted fair share.

Q And did you question your Faculty Representative concerning your interpretation of what fair share meant?

A I asked the Faculty Representative to go back to the Representative Council and ask what fair share meant, as it was being negotiated or might be on the negotiating table.

Q And did you receive a reply from the Faculty Representative?

A The reply was virtually all. I asked then, virtually all of what, and the answer was membership for the unified membership of the local, state and the NEA, all three affiliates.

Q So, you found out, after questioning this representative, that it meant total dues for MTI, total dues for WEA and total membership and dues to NEA. Is that right?

A Ninety-five dollars, yes.

Q Now, after you found this out, what action, if any, did you take?

A Another discussion with Mr. Reed ensued and we decided that we might like to get a letter out to teachers and find out what their opinion was — in general, all teachers.

Q Then what action did you take?

[74] A At that point we got into the strategy and we thought that one way to start might be to find a listing of non-MTI members because they might have this feeling opposing agency shop and one hundred percent. We contacted the Administration. I spoke to Mr. McDaniels of the Business Office and asked him if we might have a copy of the dues check-off list.

Q What was his reply?

A His reply was that he would check into it and let us know. He called me back within an hour and a half and told us he could give us no information whatsoever.

Q What did he give you as a reason?

A The reason was — I argued with him that these were public records, the pay records, and that we should be able to examine them and his answer was that the pay records themselves were spin-offs of — in IBM terms, I

guess, not the actual documents, but were spin-offs of other pay documents and as such might not be public records and he was unwilling to give them to us.

Q Then what action did you take?

A At that time we decided how much money we had and decided to make a general mailing of the first letter to all teachers who were listed as staff members, not administration and non-certified employes — what's the word? Non-certified employes.

Q Where did you get a list of the teachers in order to make this general mailing?

A In the fall all teachers are supplied by the Public Information Office of the Board of Education, a listing of all of the teachers and their addresses.

Q So, after you asked to examine the check-off list in the Business Office of the Board of Education, you used the directory to mail to the teachers. Is that it?

A Yes, sir.

Q Now, when you decided to do a mailing, what did you decide to mail and when?

A Mr. Reed and I drafted various letters and agreed on a letter about November 10th or 11th, I believe, and we had it printed. It's the letter, I believe, that's been admitted as an Exhibit.

[75] Q Is this it?

A Yes.

Q That's Exhibit No. 10 and was it you and Mr. Reed who developed this? Is that it?

A Yes, exclusively.

Q I notice that there's a mailing address. What mailing address is that?

A That mailing address is a post office box at the Hilldale sub-station.

Q Did you and Mr. Reed apply for that post office box?

A Yes, we applied for it under the name of ECOLOGY.

Q So this letter was a general mailing to all teachers. Is that correct?

A All employes covered by the bargaining agreement. It includes Social Workers and Psychologists and many other professionals.

Q When did this go out?

A This was mailed the 14th of November.

Q And what, if any, reaction did you have to the letter?

A We received approximately two hundred replies.

Q After you received the two hundred replies to the letter, what action did you take?

A After we received the replies we decided that since the great majority, being favorable, that we might like to see if this issue could be articulated further.

Q What action did you take?

A Then, at that point we called a meeting together of the teachers who had signed on the return of the letter that they would work actively. We called them together.

Q And where and when did this meeting take place of the teachers that replied to your initial letter?

A This meeting took place on the Thursday previous to December 6th. I don't have the exact date.

Q Where did this meeting take place?

A This meeting took place in the Community Center at Eagle Heights.

Q And who all attended the meeting?

A The meeting was attended by fourteen teachers in the Madison School System, seven of them MTI members and seven of them not.

[76] Q So at the meeting on the Thursday prior to December 6th, fourteen people attended the meeting, at your call, seven of which were MTI members?

A That's correct.

Q What was the purpose of the meeting and what took place?

A The purpose of the meeting was, first of all, to discuss the issue. We felt that due to the great confusion that we felt had been evidenced in Mr. Reed's and my own faculty and our resulting mail finding, we thought that since there was confusion and since 198A had just been recently passed we would like both MTI and the Board to put off this issue until the teachers could be informed and know exactly what it is they were doing before they did it.

Q All right. What developed out of that particular meeting?

A Well, what developed out of that meeting — two things. Number one, the so-called petition —

* * *

Q I show you what's been marked as Employer's Exhibit No. 18 and ask you to identify it.

A This is the petition that was drawn up by a group of fourteen people as transcribed by one of the teachers who was the secretary of the group for that meeting.

* * *

(Document previously marked for identification as Exhibit No. 18 was received in evidence.)

* * *

Q What else was discussed at that meeting?

A At that meeting a list of pertinent points of information regarding this issue was made.

Q You say the meeting was the Thursday before December 6th. Is that it?

A That's correct.

Q It was December 2, 1971. Is that right?

[77] A Yes.

Q What else developed out of that meeting?

A A listing of the points of information as understood by the people, the fourteen people who were present, to accompany the petition as it went into schools.

Q All right. Now, this was developed by the fourteen people in attendance at the meeting. Is that it?

A Yes.

* * *

Q Okay, I show you what's been marked as Employer's Exhibit No. 19 and ask you if you can identify it.

A Yes, this is a copy of the points of information as of that date.

* * *

(Document previously marked for identification as Employer's Exhibit No. 19 was received in evidence.)

* * *

Q Was anything other than those two Exhibits developed at the meeting of December 2nd?

A At the meeting we also talked about the logistics, how we would circulate these in the schools. The group made the decision that the results, the first day of results would be communicated to both Madison Teachers, Incorporated and the Board of Education.

Q Now, Mr. Holmquist, when you talk about the first day's results, this meeting was on a Thursday and what were your intents concerning the petition and circulation?

A Our intents were to get it into the schools on Monday. It was already late Thursday night and there was no way to do it Friday, much less contact someone to carry the petition to all schools by the next morning.

Q Now, that was your intent. What logistics did you arrange through these fourteen people concerning the logistics?

A These fourteen people were to take the petition to their own schools. They would attempt to find people at other [78] schools who would take the petition and this was to be done over the weekend — Friday night, Saturday and Sunday.

Q All right. When the meeting broke up were any other letters or anything prepared by members of the committee?

A No. There was another letter that I prepared the following evening about the logistics that had been decided on.

Q All right. Did this letter also accompany the two documents that were developed at the Thursday night meeting?

A Yes, it did.

* * *

Q I show you what's been marked as Employer's Exhibit No. 20 and ask you if you can identify it?

A Yes. This is a cover letter to go with the information letter and the petition. It speaks of ways the information letter and the petition might be circulated and used. The only thing missing is the telephone number. On that line, either Mr. Reed's or my telephone number appeared. We split them in half.

* * *

(Document previously marked for identification as Employer's Exhibit No. 20 was received in evidence.)

* * *

Q After you had prepared the petition and the points of information and the cover letter, how were these things reproduced?

A We paid a printer.

* * *

Q And after you had them reproduced, what action did you take with the documents you prepared?

A Oh, the documents, as many as we had definite mailing [79] addresses for by late Saturday evening, were mailed to these people — I'm sorry — by late Friday evening, were mailed to these people so they could receive them Saturday. Those were put in the mail approximately at 4:00 a.m. Saturday morning. The schools that we did not have a contact at at that time, the information was hand delivered on Saturday and Sunday.

Q Now, you're talking about mailing this material to people. How did you know who to mail it to in the different schools?

A Well, the fourteen people who were at the meeting and people were called and they supplied a friend's name in another school and we were able to get a contact in all but one school.

Q And you say that all of these documents were in the hands of the people who were to circulate this petition and other information by Monday morning? Is that it?

A All except — well, by Sunday evening except for one that I did mail to an individual teacher at a school simply because I didn't want to hand deliver it out to Sun Prairie on Sunday night. So, he got it Monday afternoon.

Q Were there any schools where the information was not mailed to?

A Well, that was the only school with an actual mailing to a school address.

Q Was there any other school that didn't receive this information?

A There was one school that did not have any contact and that was Sandburg School.

Q Okay, now after the information was distributed, what were the individuals who received the information to do with it?

A They were to attempt to inform, first of all, teachers of the points of information that we had to date on this issue. At that point, if the teacher wished to sign the petition to express their feeling of confusion and wanting to have this issue straightened out and wanting to have it all straightened out publicly, they were able to sign. The petition was to be carried in non-teaching time during the school day.

Q Now, the Board meeting was to be held December 6th, wasn't it?

A Yes, it was.

Q How were you going to get the results of that — of your work [80] before the Board meeting?

A On the last letter that was introduced, the cover letter, when I spoke of the missing telephone number — the telephone numbers were Mr. Reed's and my own home addresses, as our wives were answering the telephone between a specified period of time the teacher who was circulating was to call into that number the first day the number of people who had been contacted to potentially sign and the number of actual signers in the schools.

Q Now, you got involved in this matter, you said, in October and November. After you first sent out your ECOLOGY letter, do you recall any strange incidents or find any strange things in your mailbox as returns?

A Yes.

Q What did you find in your mailbox besides your replies?

A In my own personal mailbox — how does one say dog shit euphemistically? I'm not sure, but there was a plastic bag of it in my mailbox. There were also some interesting letters in response to the ECOLOGY letter that came to the post office box.

Q And were these letters signed?

A Some were and some weren't.

Q Did you receive a letter from John Waldman?

A Yes, I did.

* * *

Q I show you what has been marked as Employer's Exhibit No. 21 and ask that you identify it.

* * *

Q Employer's Exhibit No. 21 is before you. Is that the letter you received from John Waldman?

A Yes, it is.

* * *

[81] (Document previously marked for identification as Employer's Exhibit No. 21 was received in evidence.)

* * *

After the meeting of December 2nd and between December 2nd and December 6th, did you receive any communications from Madison Teachers, Incorporated?

A None that I recall.

Q All right. Now, when it came time for December 6th, what was — you intended to speak on December 6th. Is that it?

A On December 6th we intended to present to both groups that were at the bargaining table — well, we intended to present to both groups the first day's results of the teachers' exposure to this information petition.

Q And would you explain to the Board members the reason why you were motivated to take this survey and also to present the results of the survey to the parties involved in the negotiations?

A I was motivated initially by my feeling when I asked what fair share was. It was one hundred percent unified membership. I did not favor that. I favored paying a fair share local membership. If I had been told that that was seventy-five or eighty percent I would have paid it and not have had any concern whatsoever with the issue.

However, in talking to other faculty members in my school and speaking with Mr. Reed and colleagues in other schools, I discovered there was, indeed, great confusion on what Agency Shop was, what Union Shop was and what 198A and 111.70 was and I didn't think that we wanted to — on reading 198A and finding out that it took a majority vote to remove a bargaining agent, I thought that — and this was not common knowledge as were a lot of other things, and I thought teachers ought to know before making such a monumental decision and I didn't feel that they really knew what was going on and that was my position.

[82] Q Okay, when did you go to the Board of Education on December 6th?

A I arrived there at approximately 6:00 p.m.

Q And when you arrived at the Board of Education, did you meet with Mr. Reed?

A I did not.

* * *

A (Interrupting) I left Mr. Reed at the class. I had left early and left Mr. Reed to finish taking notes for both of us.

Q Then you proceeded to the Board of Education about 6:00 o'clock for the meeting and he was to meet you there later?

A Yes, he was.

Q When you arrived at the meeting of the Board of Education, what did you observe?

A When I arrived I observed an almost deserted building — no one in the parking lot, on the streets or in the building from what I was able to observe.

Q Were there any teachers in the vicinity of the entrances of the building?

A When I arrived at the building, no.

Q And what did you do when you arrived at the building?

A I went into the auditorium and looked around. I was hoping that I would get to speak and just wanted to stand there for a minute.

Q Who was the first person that you came in contact with when you arrived at the Board of Education?

A I said hello to a custodian who happened to be in the auditorium and was adjusting the heat at the time.

Q Okay, who was the next individual you talked to?

A The next individual was Mr. Waldman.

Q Mr. Waldman?

A Yes — oh, I'm sorry. Excuse me — Mr. Matthews.

Q Where did you have a discussion with him?

A In the front of the auditorium — near the front of the auditorium.

Q Was there anybody else there during your discussion, your initial discussion with Mr. Matthews?

A The room was deserted.

Q And what do you recall of that conversation with Mr. Matthews?

[83] A I recall, first of all, asking him if he were aware of the fact that there was a petition in the school.

Q And what was his reply?

A His reply was that he was aware and he did have a copy of it.

Q He had a copy of the petition?

A He stated he had a copy of it. I presented him with another copy of it at that time and informed him that I would be presenting it before the meeting with the number of signatures, the first day's signatures.

Q You would be presenting it to who?

A To himself before I presented it to the Board of Education.

Q And what was Mr. Matthews' reaction, if you recall?

A To that particular statement, none. We then discussed several other topics

Q All right. Then what? Did you part ways or —

A Well, at that point, yes. We both went out opposite ends.

Q And when did Mr. Reed arrive?

A Mr. Reed arrived about 6:20 or 6:30, I believe.

Q And was this after the conversation with Mr. Matthews?

A This was after the conversation with Mr. Matthews.

Q And what did you and Mr. Reed do after he arrived?

A Well, we phoned our wives.

Q And where did you go to phone your wives?

A Before Mr. Reed arrived, I walked in the back door of the Curriculum Department office and wanted to retype my remarks for the Board of Education that evening.

Q Did you receive permission to enter the office from anyone from the Administration or the custodian there?

A No. There was no one there at that time. I walked past the custodian who was mopping the floor at the other end of the office. He didn't speak to me. I sort of feel at home there. I serve on five curriculum committees and I'm down there frequently for meetings.

Q Now, you entered the office and retyped your speech. Is that it?

A That's the first thing I did, yes.

Q Then after that what happened?

A After that Mr. Reed arrived. I went out in the hall and talked to him and we talked and then two conversations ensued with members of MTI.

[84] Q You say you talked. Where — did you go anyplace to talk?

A We talked in the Curriculum Office.

Q You went to the Curriculum Office then, after you met him. Is that it?

A Yes.

Q While you were in the Curriculum Office, what did you do?

A I used the typewriter and telephone.

Q And did you receive the results from your wives to the petition in the Curriculum Department?

A Yes, we did.

Q And while you were receiving these results, what occurred?

A While we were receiving the results and waiting to phone, there was a knock on the door.

Q And what, if any, action did you take concerning the knock on the door?

A We ignored it. We were on the telephone, both of us, at the time.

Q What was the next thing that occurred?

A The next thing that occurred was that the door opened and Mr. Matthews and Mr. Mason came in.

Q What, if any, conversation ensued at that particular meeting?

A The conversation was mostly with Mr. Reed. I was having difficulty getting through to my wife. The phone was busy with other people calling her and I excused myself after a few moments. One of the things that was talked about while I was present was that we were questioned why we had taken to publicly present this before MTI? Why didn't we go through our legislators if we weren't happy with 198A.

Q And what was your reply to that?

A My reply to that was that question at the present moment was moot. The Bill had been passed.

Q And that's when you left. Is that it?

A That's when I went to dial the telephone, yes.

Q And the conversation continued with Mr. Reed? Is that it?

A Yes.

Q After you returned to Mr. Reed had Matthews and Mason left?

A Yes.

Q And you continued to gather results of the survey. Is that it?

A That's correct.

[85] Q And as you were continuing to gather results, did any further meetings or discussions occur?

A Mr. Matthews and Mr. du Vair and Mr. Mason came back.

Q They came back to the Curriculum Department?

A That's correct.

Q And did further discussion ensue concerning your proposed activities that evening?

A Yes, it did.

Q And what was the nature of those discussions?

A The nature of the discussions were the request by them that we not present our information to the Board of Education and secondly that there was a discussion of the two items that were on the bargaining table, the fair share and the nonrenewal, arbitrary binding —

Q (Interrupting) What do you mean, there were some discussions concerning that?

A At one point they offered to —

Q (Interrupting) Who is "they"?

A Mr. Mason and Mr. du Vair and Mr. Matthews. They said that our presenting of the results was really not necessary. That the fair share agreement had been changed from the language that was on the table and they indicated there might be a trade-off for the two issues and were about to show us the actual documents that had been used at the bargaining session and —

Q (Interrupting) What do you mean, they were "about" to show you?

A They offered to show us and then they decided not to.

Q They offered to show you the documents that were being used in negotiations?

A They spoke that there had been a change in the Agency Shop agreement and that we might like to be aware of what that was before we spoke to the Board of Education.

Q Did they indicate they would make you a party to what information they had if, in fact, you would not attempt to speak before the Board of Education?

A The offer was not direct, no.

Q All right. After the meeting — what did you indicate to them during this discussion?

A We indicated it was our intent to present to both MTI and [86] the Board the results of this first day's petition.

Q Did they indicate that they were interested in what the results of your survey were?

A Yes, they did.

Q When did you indicate that you would give them the results of the survey?

A As I said earlier, I indicated to Mr. Matthews that I would present him the number before the meeting started.

Q Now, after they left, did you complete gathering your statistics from your wives?

A Yes, we did.

Q And was this prior to the Board of Education meeting?

A Yes, it was.

Q And at that time, what did you do?

A At that time we returned to the auditorium.

Q And when you returned to the auditorium, what did you do?

A I took another blank copy of the petition and wrote on the top of it, "N=417" and placed it on top of Mr. Matthews' books.

Q In the auditorium?

A Yes.

Q What did that number mean?

A That number was the total number of signers we had gotten on the first day as totaled up. We also did use an adding machine in the Curriculum Department office and totaled up as reported by our wives which was phoned in by the teachers in the schools.

Q And this information was then placed on Mr. Matthews' seat? Is that it?

A Yes. We looked for him in the auditorium but he, apparently, was out with the troops.

Q All right. Now, what did you do in order to register to speak at the meeting?

A Prior to the meeting, the start of the meeting, Mr. Mintener —

* * *

A Mr. Mintener, the Director of Public Information, passed out cards to all people who wished — cards to fill out for all people who wished to speak to the Board. There was a public hearing that night and the public attended also because of the proposed budget cuts which were being announced that day.

[87] Q How did you register to speak?

A I put my name on the top of it and the bottom where it indicates whether or not you wish to speak or whether to register an opinion on an issue. I checked off that I wished to speak.

Q Did you indicate on the registering form what you wished to speak about?

A No, I did not.

Q Now, after you registered and were taking your seat, what, if anything, did you observe concerning Mr. Matthews activity when he entered the auditorium?

A He took his seat at the start of the meeting and I observed him pick up the petition with the numbers on it and look at it with the number on it.

Q Okay, now you were present during the entire Public Appearance section of the Board of Education meeting. Is that right?

A I was present until adjournment of the meeting, yes. I was present for the entire meeting.

Q Now, during the Public Appearance section, a number of people spoke, did they not?

A Yes, they did.

Q And during the time the people were speaking, did the Board of Education, members of the Board of Education interrupt and ask questions and engage in discussions with these people?

A With many of the people, yes, they did.

Q And were you present when Mr. Du Vair spoke?

Q And during the time when Mr. du Vair spoke, did any of the members of the Board of Education ask questions of Mr. du Vair, if you recall?

A I believe not.

Q And do you remember the nature of Mr. du Vair's comments?

A Mr. du Vair expressed the wish that he could go home for Christmas and that the negotiations, indeed, be settled and also presented a petition saying let's get back to the bargaining table. It was signed, I believe, by fifteen hundred teachers.

Q And the petition indicating "let's negotiate" was then [88] presented to the Board of Education?

A Yes, they were.

Q And after Mr. du Vair finished, what occurred?

A My name was called to speak and I spoke.

Q Now, did you take any special precautions concerning what you said and making notes of what you said at the December 6th meeting?

A Yes, on the advice of my wife, who informs me I sometimes get a quiver in my voice when I'm speaking publicly, she suggested that I write down what I was going to say and I, indeed, did write this down. As a matter of fact, that's what I was typing in the Curriculum Office just prior to Mr. Reed's arrival.

Q Did you then read the statement to the Board and to the members of MTI that were seated in the audience?

A Yes, I did. I read it verbatim and I added one additional comment and a heckler spoke from the audience.

Q Would you read what you read at the December 6th meeting to the Commission, please?

A Yes. "My name is Albert Holmquist. I reside at 5626 Crestwood Place. I am another teacher. I represent an informal committee of 72 teachers in 49 schools. I would like to inform the Madison Board of Education, as I already have the Madison Teachers, Incorporated, about the results of an informational survey regarding one of the thirteen or so items now on the conference table and one of the main items that will certainly be included in some form in the new package. If I may read it:" Then I read the text of the petition itself.

Q Do you want to read it?

A It's dated December 6, 1971. "To: Madison Board of Education, Madison Teachers, Incorporated. We the undersigned ask that the fair-share proposal (agency shop) being negotiated by Madison Teachers, Incorporated and the Madison Board of Education be deferred this year. We propose the following: 1) The fair-share concept being negotiated be thoroughly studied by an impartial committee composed of representatives from all concerned groups. 2) The findings of this study be made public. 3) This impartial committee will ballot (written) all persons affected by the contract [89] agreement for their opinion on the fair-share proposal. 4) The results of this written ballot be made public." Then I stated, "We feel this study necessary because neither the board's negotiators who have placed entirely too much emphasis on this one point nor Madison Teachers, Inc., which speaks euphemistically about the 'whole package' and therefore is not issue specific... Neither has properly addressed the serious issue of fair-share and agency shop. We find much confusion in the proposal as it stands and even more on the part of teachers' interpretations of it.

"For evidence, 417 teachers from the 31 schools which represents 53% of the total number of these faculties of these schools ..." At this point I was interrupted by a heckler.

Q What did the heckler say? Do you remember?

A It was a guffaw.

Q What was your response?

A I reminded that it was a majority. I continued, "... who have called in to this hour have signed the petition on the first day it was taken into their schools. Due to this confusion, we wish to take no stand on the proposal itself,

but ask only that all alternatives be presented clearly to all teachers and more importantly to the general public to whom we are all responsible. We ask simply for communication, not confrontation."

Q Is that the end of your statement?

A Yes.

Q And what then happened?

A At that point there was silence for approximately fifteen seconds and Mrs. Doyle asked a question.

Q What did she say?

A Her question was, "Do you intend to communicate these petitions to the Board when you have them all?" My answer was yes.

Q Have you, in fact, presented the petitions to either Madison Teachers, Incorporated or the Madison Board of Education?

A Not to this date.

Q So the only thing that was presented to both parties was the result of the survey that was taken on December 6th. [90] Is that right?

A That's correct.

Q Now, during this entire period of time, Mr. Holmquist, from the time that you got involved in this in October until the December 6th meeting, did you have any discussions concerning this matter with the Board of Education?

A None whatsoever.

Q Did you have any discussions with Madison Teachers, Incorporated concerning this during that period of time, from October until December 6th when you met with John Matthews?

A Yes, there were two contacts. One was the contact with my own Faculty Representative that I spoke of before,

and the other — there were two, possibly three other phone calls I received from MTI members asking the results of the first — the ECOLOGY letter, that the results of this letter, this mailing, be presented to MTI rather than the Board.

Q Well, did you present the results of your first mailing to MTI?

A No, I did not.

Q But, in fact, MTI members were at the meeting, the organizational meeting the Thursday before the December 6th meeting. Is that right?

A Yes, they were. I think many of the persons who signed the letters were, indeed, MTI members and several of them indicated, along with their names, that they were an MTI member.

Q Did you communicate the results of this survey that you were taking to the Board of Education at any time prior to the time that you spoke on December 6th?

A Not to the Board of Education, no.

Q Well, the survey itself, you just got the results on December 6th. Is that right?

A The results of the survey? Are you talking about the ones that went to all teachers or the first letter?

Q Well, the first letter. What did you do with the results of the first letter?

A The first letter results were taken, of course, to that meeting, the December 2nd meeting.

Q Did you receive any financial assistance or assistance of [91] any kind from the Administration of the Madison Public Schools or the Madison School Board?

A None whatsoever.

Q How did you finance the entire thing?

A My wife's new coat.

* * *

Mr. Reed financed approximately one-third of it and five other teachers contributed money to it in small amounts.

* * *

Q Was the Board of Education or the Administration aware of the fact that you were, or intended to circulate a petition prior to December 2nd?

A That we intended to circulate a petition in all of the schools?

Q Yes.

A No, they were not.

Q Was MTI aware of the fact that you were going to circulate a petition?

A I would assume that with seven members present at the meeting, that they would have gotten some feedback, yes. It was no secret.

Q Did you receive any assistance at all in your project from the Administration or the Madison School Board?

A None whatsoever. We asked for the mailing list and that was not given.

Q So this entire grass roots reaction to fair share is yours and Mr. Reeds. Is that right?

* * *

Q This entire reaction to fair share was yours and Mr. Reeds. Is that it?

A Yes, initially. It grew.

Q You are suggesting initially that what you mean by growing [92] is other teacher involvement. Is that it?

A Well, the fact that we did receive a little over two hundred mail responses. The fact that four hundred and seventeen people wanted clarification, yah. I'd say the fact that we were able to get a representative in all of the schools except the one — from fifty schools from Thursday night to Sunday afternoon I think speaks of a grass roots movement.

* * *

CROSS-EXAMINATION OF MR. HOLMQUIST BY MR. KELLY:

Q As I understand, this was you and Mr. Reed's first approach to teachers in the Madison School District relative to fair share. Is that correct, sir?

A Outside of asking opinions of teachers at our own schools, yes.

Q But other than the faculty in your own schools, your first approach to teachers generally employed by Madison Public Schools was this letter?

A Generally, yes. I might say that I asked teachers who were neighbors and who were on committees that I serve on also.

Q And this letter was developed by you?

A Mr. Reed and myself.

Q Did you discuss this letter with anyone other than teachers prior to your sending it out?

A No, we did not.

Q Did you discuss it with any member of the Administration?

A No.

Q Did you discuss it with anyone in the Curriculum Department?

A No, sir.

Q Did you discuss it with Mr. Sapone?

A No, I did not.

Q And this was mailed and you say that you, individually, or Mr. Reed, paid the expenses?

A Yes, sir.

Q Who did the addressing of these?

A Myself, my wife, Mr. Reed and his wife.

Q Did you ever think that you ought to visit with the MTI about this problem?

A No, sir.

Q Did you send a copy of this specifically to the MTI?

A No, I did not.

[93] Q Now, as a result of the meeting on December 2nd, you came up with what has been marked as Employer's Exhibits No. 18, No. 19 and No. 20. Did you discuss Exhibit No. 18 with anyone other than teachers?

A No, I did not — my wife. My wife is a teacher.

Q Did you discuss it with any member of the Administration?

A No, I did not.

Q How about Exhibit No. 19, the points of information? Was that discussed with —

A (Interrupting) Some of the points on there were gleaned from position papers that were put out by both MTI and the Administration. I couldn't say for sure which ones were which at this time.

Q It says down here, "The enabling legislation, Senate bill 198A, is constitutional according to our legal advice." Did you seek legal advice?

A Correct. I spoke about the matter with two friends who are attorneys, yes. In a formal sense, no. We did not seek legal advice.

Q And here, again, the total cost was paid by you?

A That's correct.

Q You mentioned there were five other teachers. Were they members of MTI?

A I don't know for sure. I'd have to check.

MR. KOPS: (Interjecting) I guess I'm a bit confused. Are we talking about the meeting on Thursday?

WITNESS HOLMQUIST: The initial letter was funded entirely by myself. There were contributions later. It's a matter of when money comes in.

MR. KOPS: Bob, I'm confused about these five other teachers. There was a meeting where fourteen teachers were present.

MR. KELLY: As I understand your testimony, you testified that Mr. Reed paid about a third and you paid the balance of it and a small amount that five individual teachers contributed to the cost of mailing.

WITNESS HOLMQUIST: That's correct. From one individual we received two dollars in the mail. At the meeting itself, one teacher gave us one dollar and we received fifteen dollars from a group of three teachers at [94] one other school.

* * *

Q You spoke of receiving a letter from Mr. Waldman. That's Exhibit No. 21.

A Yes, sir.

Q Do you know John Waldman?

A No, I don't.

Q Do you know what capacity Mr. Waldman may have written this letter in?

A Mr. Waldman is the ex-President of MTI. Yes, I received much mail urging me to join MTI last year over his signature.

Q Did you interpret this letter as coming from Mr. Waldman as President of MTI?

A I interpreted that letter to come from Mr. Waldman. I believe that that is stated in the body of the letter.

Q This is his personal letter as John Waldman?

A That was our understanding of it, yes.

Q You didn't understand it to be an official letter of the MTI, did you?

A No, we understood it to be his own personal letter. We also were aware of the fact that he was on the Board of Directors of MTI and interpreted his letter in that light.

Q When you made your statement to the Board of Education, what was your purpose?

A My purpose was to attempt, since there was the confusion on the issue, to attempt to clarify just what all this was about — what fair share and agency shop was. I understand, legally, there is a difference between those two and when I would see in a publication it said fair share and in parenthesis it said agency shop — I felt that, in and of itself, was engendering confusion on the part of teachers and I wanted that straightened out.

Q It says point one here, as I understand you read to the Board. "We propose the following: 1) The fair-share concept being negotiated be thoroughly studied by an impartial committee composed of representatives from all concerned groups." Did you want the Board to do that, sir?

A This was the feeling of the group of fourteen people who met on Tuesday evening.

Q And your purpose as their spokesman was to encourage the [95] Board to do that very thing. Is that right, sir?

A That's correct. That's the way it reads.

Q And when it says here that "We propose ... the findings of this study be made public." It was your desire that the Board do that?

A Yes. The desire of the group was that all negotiation be public.

Q At this point, your purpose was to ask the Board in this specific request to make a study of fair share concept a matter of public knowledge?

A We asked the Board and Madison Teachers, Incorporated to do that.

Q Number three, "This impartial committee will ballot (written) all persons affected by the contract agreement for their opinion on the fair-share proposal." Was it your intent that the Board adopt that and do that — recommend that change?

A The intent of the group was that the Board, with Madison Teachers, Incorporated, work this out. Not that this be done by the Board itself or by Madison Teachers itself but somehow as a group be worked out together.

Q But your purpose was that an impartial committee of some selection ballot the teachers? That was your desire. You wanted the Board to do that?

A Yah, I would have like to have seen that written into 198A.

Q And it was also your desire that the results of this written ballot be made public. Is that right?

A That's correct.

Q In other words, it was your specific purpose in addressing the Board that they not adopt Madison Teachers' fair share proposal at that time?

A No. We wished that the information be given to all teachers regarding agency shop, fair share proposal.

Q There was a proposal before the Board at that time, before their negotiating committee, on fair share, was there not?

A Yes. We asked that it be deferred this year.

Q So it was your purpose that the Board not pass that — not agree to accept that fair share proposal at this time.

A We, and I'm speaking of the group, would have been amenable if the poll could have been conducted before the new contract [96] would have taken effect.

Q All right. This was December 6th. On December 6th your purpose in addressing the Board was to defer or delay any action on fair share at that time. Is that correct?

A My purpose was to end the confusion by deferral, yes.

Q Did you want the Board to defer action at that time? Was that your purpose?

A I wanted the Board and MTI to get it straight by referral. I think it's very clear. By "deferral" I should have said.

Q But you never, before December 6th, came to the officials of MTI and asked for that position?

A In what capacity?

Q Well, did you contact your Executive Secretary? Secretary?

A No, I didn't.

Q Did you contact your President?

A No, I did not.

Q Did you contact the Chairman of your negotiating committee?

A No, I did not.

Q Did you contact any member of your negotiations committee?

No, I did not but they also received the first letter and they had also seen the petition prior to the meeting of the School Board.

* * *

Mr. Holmquist, are you aware the Statute permits a vote on fair share agreements?

WITNESS HOLMQUIST: It's my understanding that the statute permits a vote after adoption at the negotiating table. That assumes that it has been negotiated and accepted by both sides. Now, if you're talking about a vote after the first fact, that's a different thing.

CHAIRMAN SLAVNEY: Are you aware that there's a provision in the Statute and that provision in the Statute relating to the fact that if a majority of the employes in the bargaining unit do not favor the fair share agreement, that it would be terminated?

[97] WITNESS HOLMQUIST: Yes, I'm aware of that. That is, after it's adoption of course.

* * *

Q Are you aware of the fact that any agreement accepted by the negotiation team of MTI would be presented to the teachers for ratification?

A Yes, I'm aware of that.

* * *

MR. KELLY: Yes, that was my question.

WITNESS HOLMQUIST: It was my understanding that the agreed upon — the negotiated agreement by MTI and the Board is presented to MTI members. I have never been presented with the opportunity to vote on a contract.

* * *

[98] Q You say on the evening of your — of the meeting of the School Board, you went there at 6:00 o'clock and you went to the Curriculum Office. Is that right, sir?

A I went to the auditorium.

Q Well, after you went to the auditorium, you did at some time go to the Curriculum Office?

A Yes, sir. I did.

Q Do you have to have a key to get in there?

A I didn't that evening.

Q Was it open?

A I asked to be let in.

Q Who did you ask to let you in?

A The custodian.

Q You asked a custodian to let you in?

A That's correct, the first time I entered.

Q The first time you entered where, sir?

A The Curriculum Department.

Q You asked the custodian to let you in?

A That's right.

Q And what did you tell the custodian?

A That I'd like to get in to use the telephone, please.

Q Had you pre-arranged that with Mr. Reed that he would meet you inside the building in the Curriculum Office?

A I arranged with Mr. Reed to meet in the hallway.

Q Outside of the Administrative offices?

A Outside of the offices, in the hallway.

Q Did those offices allow incoming calls after 6:00 o'clock?

A The switchboard, I believe, closes down at 4:30.

Q How would you get incoming calls or were you calling your wives?

A I was calling out.

Q Had you made any pre-arrangement with anybody in Administration to use those offices?

[99] A None whatsoever.

Q You had asked no permission?

A No. I just thought I'd save a dime.

Q You say you and Mr. Reed are taking a class together? Is that correct?

A We were last semester.

Q What class was that?

A It's called The Politics of Education.

Q What does it lead to? Does it lead to a degree?

A It's a course in the Department of Educational Administration. It's an optional course for a degree. It's a degree in Educational Administration.

Q No further questions.

REDIRECT EXAMINATION OF MR. HOLMQUIST BY MR. KOPS:

Q Mr. Holmquist, Mr. Kelly, through some of his questions indicated that somehow the direction of your remarks was limited to the Board of Education. Were, indeed, was it your intent to limit your remarks or limit the results of the survey to the Board of Education?

A It was not my intent nor was it my action.

Q What was your intent concerning the nature of this survey?

A That it be cleared up — the confusion.

Q To whom were your remarks directed?

A The spoken remarks?

Q Yes, and the petitions?

A The petition was, as it reads on the top, directed to the Madison Board of Education and Madison Teachers, Incorporated.

Q All right. Now, you spoke of remarks. To whom were those directed?

A Those were directed to the Board. It was, after all, the Board Meeting. The MTI representatives were present and did hear them as they have stated.

Q And, in fact, you communicated the nature of your remarks prior to the meeting to the members of MTI. Is that correct?

A That's correct.

Q And along with the results of the survey?

A That's right. That's correct. My other intent was that the public know that there was confusion.

Q Okay. After the meeting and after you spoke, Mr. Holmquist, did you have any contact with members of the Administration?

[100] A I had none, outside of saying hello and friendly sort of talking.

Q Did you have any contact with MTI after the meeting?

A I spoke to Mr. Du Vair and expressed by regret that I had been unable to sign the petition that he presented to the Board.

Q And as you were leaving, did anything else occur?

A Yes. I was grabbed by the coat collar by someone I presume to be a teacher but I'm not certain, and was picked up slightly off my feet and told in a gruff voice, "We'll get you."

Q Now, after that was there any contact between MTI and yourself?

A There has been none outside of a letter urging me to join their organization.

Q When did you receive that letter?

A Mid-January, I believe.

Q The information that you collected as a result of this meeting on December 2nd which resulted in your petition on December 6th, the information was initially given to MTI, then, through Mr. Matthews. Is that right?

A The evening of the December 6th meeting, yes.

Q Did you ever, other than speaking, give the Board members the results of your survey in writing?

A No, sir.

Q Or other members of the Administration?

A No.

Q Nothing further.

RECROSS-EXAMINATION OF MR. HOLMQUIST BY MR. KELLY:

Q Mr. Holmquist, did you think that the meeting on December 6th was a joint meeting between MTI and the Board?

A No, I did not.

Q Did you know that members of MTI would be there?

A Yes. It was rather well advertised in the paper and in the schools.

Q You say that someone grabbed you in a violent fashion. You don't know who that was?

A No.

Q You don't know whether it was a member of MTI?

A No. It could have been anyone, as I stated before.

Q No further questions.

[101] Q Okay.

CHAIRMAN SLAVNEY: You're dismissed.

(The Witness is dismissed.)

* * *

MR. KOPS: I'll call Ralph Reed.

MR. RALPH K. REED having been called as a Witness by Counsel for the Respondent and having been duly sworn on oath, was examined and testified as follows:

DIRECT EXAMINATION
OF MR. RALPH K. REED
BY MR. KOPS:

Q Would you state your name for the record?

A Ralph K. Reed.

Q By whom are you employed?

A Madison Public Schools

Q Are you a teacher for the public schools?

A Yes, I am.

Q Are you a member of Madison Teachers, Incorporated?

A No, I am not.

Q Are you a member of any labor organization which has membership among teachers employed by Madison Public Schools?

A No.

Q You are a friend of Al Holmquist?

A Yes.

Q And you were the other individual who collaborated with Mr. Holmquist concerning the development of the survey which took place on December 6th, 1971?

[102] A Yes, among others.

Q Mr. Reed, Mr. Holmquist testified that there was some dissatisfaction with regard to — or confusion regarding exactly what fair share meant, and was that the initiating force for your getting involved in this?

A I would say yes because we were confused personally.

Q And did you approach your MTI representative at your school concerning what fair share meant?

A Yes, I did.

Q And what response, if any, did you receive from him?

A He did not know either.

Q Did he indicate to you that he would get the information for you?

A Yes.

Q Did he?

A Yes, he did come back saying it was full unified dues.

Q And is that when you and Mr. Holmquist decided to take some individual concerted action?

A Yes.

Q Now, other than your contact with your MTI representative in your school, did you have any contact with other members of MTI?

A From what point?

Q Well, after you received the notification that fair share really meant unified dues, did you contact MTI at all?

A No, except through my local representative.

Q Okay, did you receive any satisfaction from your local representative?

A Not exactly, due to the fact that he was not in complete agreement with the MTI position on fair share either.

Q Who was your representative?

A Roger Wiebe.

* * *

[103] CHAIRMAN SLAVNEY: I'll let him answer.

* * *

Q What was the position of Mr. Wiebe?

A He was not sure that fair share should also mean one hundred percent. As to the percentage, neither one of us could say what would be a fair share.

Q Now, did you participate in the development of the letter that was sent to all teachers?

A Yes, I did.

Q And you also participated in the meeting that was held for December 2nd?

A Yes, I did.

Q And the development of the petition?

A Yes, I did.

Q And you paid some of the expenses for this?

A Yes, I did.

Q Now, did you also — were you present at the meeting on December 6th?

A Yes, I was.

Q And did you, at any time during these conferences prior to the meeting with Mr. Matthews, Mr. Mason and Mr. du Vair, communicate or give them the petition that you were circulating in the schools?

A No, I did not personally.

Q Well, did you see them have a copy of the petition?

A Yes, I did.

Q When was that?

A Prior to the meeting I personally saw Al Holmquist place a copy of the petition on Mr. du Vair's books.

Q Mr. du Vair's or Mr. Matthews?

A Excuse me, Mr. Matthews' books. My fault. I also personally saw Mr. Matthews pick it up and look at it and it had the number written on there at the top as to how many responses we had received.

Q Now, during one of the discussions in the Curriculum Office, specifically the discussion where Mr. Matthews was present and Mr. du Vair was present and Mr. Mason was present, was there an appeal on the part of these people that you not present the results of your informational survey to the Board of Education?

[104] A Yes, there was.

Q And were any promises made to you concerning if, in fact, you would not present that information?

A I would say no, there were no promises made.

Q Well, what feelings, if any, did you gain from this appeal that you not present the information?

A They stated a willingness to possibly show us the newly arrived at agreement between the Board of Education and MTI if we would consider not going before the Board of Education with our results.

Q Did they express and insist at that point in seeing the results of your survey?

A Yes, they did and we said we would give them a copy of the results whenever we had them ourselves since we were still in the process of obtaining them from our wives.

Q Now, did you receive any assistance from the Administration of the public schools in this matter?

A No, I did not and I did not request any.

Q Did you attempt to contact, personally, any members of the Board of Education concerning this matter?

A No, I did not.

Q Or members of the Administration concerning this matter?

A No, I did not concern them other than to tell my local Principal what I was doing and asked his permission to present this petition in our school.

Q Now, that was December 6th, is that it?

A Correct. I had also shown him our earlier letter as it had been mailed out so he would be knowledgeable of what I was doing as a teacher in his school.

Q Now, to whom was this survey directed or the results of this informational survey directed?

A To the Board of Education and the Madison Teachers, Incorporated.

Q And what was the rationale for becoming involved in this issue which ultimately resulted in the circulation of the petition and the speech by Mr. Holmquist?

A A clarification of the issue as we saw it. In other words, we did not feel as though we clearly understood the issue and felt as though, from conversations with other teachers, that many others did not know the real issue or what the issue really was. So, we were asking only that we have [105] information available to all teachers that would clarify this issue for everyone.

* * *

CROSS-EXAMINATION OF MR. RALPH K. REED BY MR. KELLY:

Q You spoke of this petition which I think is Employer's Exhibit No. 18. The petition given to Mr. Matthews or the petition you saw given to Mr. Matthews had no names on it?

A No, it did not.

Q Where did the number appear on it? Do you know?

A On the top.

Q What did it say?

A N=417.

Q N=417 is all that was on there?

A Yes, assuming that "N" means Number.

Q You say that the officers of MTI had appealed to you not to present any information you had to the Board of Education? Did they tell you why?

A They felt it would be damaging to their position.

Q Did you ever use the school mailboxes?

A In my local school, I did, to give the informational letter to the teachers in my school.

Q And did you ask permission from your Principal?

A Yes, I did.

Q And did he give you permission to do that?

A Yes, he did.

Q And he also gave you permission to circulate this petition in the school? Is that right?

A On my time, yes. I should say on my "non-teaching time."

Q Did you ask, specifically, what area you could do it in?

A No, I did not.

Q Where did you circulate it?

A The teachers' lounge and in individual teacher's rooms when the teachers were not in a class in my school.

Q And your Principal did give you permission to circulate this?

A Yes.

Q Did you show them the petition and let them read it?

A Yes, I did.

Q Did you use the teachers' mailboxes to distribute what has [106] been marked as Exhibit No. 10?

A No, I did not.

Q What did you use the teachers' mailboxes to distribute?

A I sent out a point of information letter by myself that was an off-take from the one which we presented to all of the teachers in the forty-nine schools.

Q I show you what's been marked as Employer's Exhibit No. 19. It's different from this. Is that right?

A It is slightly different but it is very basically the same. It has similar content.

Q Have you got a copy of that?

A Yes, I do.

Q Could we see it, please?

A Yes.

* * *

Mr. Reed, I show you what's been marked as Union Exhibit No. 22 and ask you if you can identify that.

A Yes. I typed it and I signed it.

Q Its purports to be a letter addressed to "Dear fellow Van Hise Teachers" and it's signed by you. Is that correct?

A That's correct.

Q And this letter you took to your Principal and asked his permission to circulate it in the teachers' mailboxes?

A Yes, I did.

Q Did you circulate it anyplace else?

A Yes, I did.

Q Where did you circulate it?

A At Van Hise Elementary also.

Q And how did you circulate it there?

A By the same method. I asked the Principal if I could put it in the teachers' mailboxes.

Q And you did, in fact, put it in the teachers' mailboxes?

A And I gave her a copy also.

Q The Principal?

[107] A Yah.

Q And the Principal at that school is who?

A Dr. Schnicke.

Q And Dr. Schnicke approved of you doing it, sir?

A Whether or not she approved, she gave me permission.

Q Did you circulate this letter yourself?

A No, I did not.

* * *

(Document previously marked for identification as Union Exhibit No. 22 was received in evidence.)

MR. KELLY: I have no further questions.

REDIRECT EXAMINATION OF
MR. REED BY MR. KOPS:

Q Mr. Reed, did you hear from any member of MTI concerning whether or not there was unanimous agreement between members of the Board of Directors for the inclusion of the fair share proposal?

A Yes, I did.

Q Who did you hear it from?

A Mr. Roy Fortune.

Q Who is Mr. Fortune?

A I believe he is the Middle School Representative on the Professional Negotiating Committee.

Q And what, if anything, did he say concerning the nature of the Board of Directors concerning agreement for putting fair share in the proposal?

A He reported that after considerable disagreement it passed on a five to four vote.

Q Was this among the Board of Directors?

A Yes, that's what he said.

Q Did he indicate who voted?

A No, he did not, other than to indicate that he was against it.

Q Did anybody else indicate to you during this that they were against the inclusion of fair share in the proposal?

A Not directly.

Q Did anybody indirectly indicate?

A Indirectly it was mentioned of others that may have been against it but it was not anything official.

Q When did you place this communication in the mailbox?

A The morning of December 6th.

[108] Q When was this? Was it before school started?

A Yes, it was.

* * *

MR. KOPS: I'll call Dr. McGrew.

DR. JEAN B. McGREW having been called as a Witness by Counsel for the Respondent and having been duly sworn on oath, was examined and testified as follows:

DIRECT EXAMINATION OF
DR. JEAN B. McGREW
BY MR. KOPS:

Q Would you please state your name?

A Jean McGrew.

Q By whom are you employed?

A Madison Public Schools.

Q In what capacity?

A I'm Assistant Superintendent of Schools.

Q And on the morning of December 6th did the Principals at any of your two schools that were mentioned

here call the Administration to find out whether or not a letter could be circulated by Mr. Reed, if you know?

A No, not to my knowledge. At least they didn't call my office.

Q Nothing further.

MR. KELLY: Nothing.

CHAIRMAN SLAVNEY: You're dismissed.

(The Witness is dismissed.)

* * *

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

[Caption omitted in printing]

DECISION

Appearances:

Madison City Attorney, by *Mr. Gerald Kops*, Assistant City Attorney, appearing on behalf of the Respondents.

Mr. Robert C. Kelly, Attorney at Law, appearing on behalf of the Complainant.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Madison Teachers, Inc. having on January 6, 1972, filed a complaint with the Wisconsin Employment Relations Commission, wherein it alleged that Joint School District No. 8, City of Madison, et al, and the Board of Education of said school district had committed certain prohibited practices within the meaning of the Municipal

Employment Relations Act; and hearing in the matter having been conducted on February 28, 1972 at Madison, Wisconsin by the Wisconsin Employment Relations Commission, Chairman Morris Slavney and Commissioner Zel S. Rice II being present; and the Commission, having reviewed the evidence and briefs of Counsel as well as briefs amicae filed by the Wisconsin Education Association, and the National Right To Work Legal Defense Foundation, being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That the Complainant, Madison Teachers, Inc., hereinafter referred to as MTI, is a labor organization, having its principal office at 121 South Hancock Street, Madison, Wisconsin.

2. That the Respondent Joint School District No. 8, City of Madison, Villages of Maple Bluff, and Shorewood Hills, Towns of Madison, Blooming Grove, Fitchburg, and Burke, hereinafter referred to as the District, operates a school system in said city, villages and towns, and has its principal office at 545 West Dayton Street, Madison, Wisconsin; and that Respondent Board of Education of the District, hereinafter referred to as the Board, is an agent of the District and is charged with the possession, care, control and management of the property and the affairs of the District.

3. That MTI is the majority collective bargaining representative for all regular full-time and regular part-time certificated teaching personnel employed by the District, including psychologists, psychometrists, social

workers, attendants and visitation workers, work experience coordinator, remedial reading, University Hospital teacher, trainable group, librarians, guidance counselors, teaching assistant principals (except at Sunnyside School), teachers on leave of absence, but excluding on-call substitute teachers, interns and all other employes, principals, supervisors and administrators, having been certified as such by the Wisconsin Employment Relations Commission on June 7, 1966.

4. That since 1966, MTI and the Board have, as a result of conferences and negotiations, entered into a series of collective bargaining agreements covering the wages, hours and conditions of employment of the aforementioned bargaining unit personnel, the last of such written agreements had for its term the period commencing January 1, 1971 and ending December 31, 1971; that said agreement included among it provisions the following in Article II:

"A. CONFERENCE AND NEGOTIATION

. . .

c. Each party to this Agreement desiring to be represented by agents for negotiating agrees to furnish to the other party a list of its duly authorized agents for such purposes. Each party agrees to negotiate only with said agent and no others, including their principals, namely, the Board of Education or Madison Teachers, as the case may be, unless the latter as principals authorize negotiations with others or themselves.

d. If matters which are proper subjects of negotiations are brought, whether in the form of a grievance, petition or otherwise, to the

attention of either of the parties to this Agreement by any individual, group of individuals or organization other than the other party to this Agreement or its duly authorized agents such latter party shall be punctually informed of such action."

5. That by letter dated January 25, 1971, MTI gave the Board timely notice of its desire to modify the existing written agreement as of the end of its term; that MTI accompanied such notice with its written proposal of modifications, deletions and additions to be made in such existing agreement for the 1972 agreement; that included in such proposal was a proposal that the 1972 agreement, covering the 1972 calendar year, contain a fair share agreement.

6. That conferences and negotiations between the parties for a successor agreement covering the calendar year 1972 continued until October 4, 1971; that the fair share proposal was a subject of such conferences and negotiations during this entire period of time; that the Board objected to incorporating the proposed fair share agreement into the 1972 agreement, for one of the reasons that fair share agreements were not permitted under the law, specifically under Section 111.70 of the Wisconsin Statutes as then promulgated; that on October 4, 1971, MTI submitted a revised fair share proposal to the Board in negotiations, wherein the MTI proposed that the parties agreed to incorporate a fair share agreement into the 1972 agreement, but that such fair share agreement would not become effective until such provisions were specifically permitted by enabling legislation; and that the fair share agreement proposal continued to be a subject under discussion at the bargaining table.

7. That Chapter 124, Laws of 1971, as adopted by the Legislature was published on November 10, 1971, becoming effective by virtue of Section 990.05, Wis. Stats. on November 11, 1971; that Chapter 124, Laws of 1971, among other things amended Section 111.70(2), Wis. Stats. so as to permit municipal employers and the majority representative of its employes to enter into a fair share agreement as defined by Section 111.70 (1) (h) of the Statutes; that thereafter, on November 17, 1971, MTI submitted to the Board in negotiations, a third fair share proposal, which proposal complied with the provisions of Municipal Employment Relations Act established by Chapter 124, Laws of 1971, relative to fair share agreements.

8. That by November, 1971 the number of unresolved issues between the parties was reduced to approximately thirteen, including issues with respect to MTI's proposals of binding arbitration of nonrenewal of teacher contracts and teacher dismissals, as well as the fair share agreement; that the Board had stood fully opposed to providing for binding arbitration of teacher nonrenewals and teacher dismissals during the entire period of negotiations first commencing on January 25, 1971; that, likewise, the Board had consistently taken a position against MTI's fair share proposal; that however, at one time in the latter part of October, or early part of November, Paul Olson, Chief Negotiator for the Board, during a meeting Chief Negotiator for MTI, indicated that he could see no way in which the Board would grant binding arbitration of teacher nonrenewal and dismissal, but that there was a distinct possibility that the Board would grant fair share; and that Olson had also indicated to MTI that there were two members of the Board who would grant the fair share proposal if MTI would drop its

demand for binding arbitration of teacher nonrenewal and dismissal.

9. That in November, 1971 Ralph K. Reed and Albert Holmquist, teachers employed by the District, neither of whom are members of MTI, drafted a document, made a part hereof as Appendix "A", and mailed same on November 14, 1971 to all teachers in the employ of the District.

10. That Reed and Holmquist received approximately two hundred replies to such letter, the majority of which were favorable to their position on fair share; that thereafter Reed and Holmquist called a meeting of those teachers who had indicated they would work actively against any fair share agreement; that such meeting was held on Thursday, December 2, 1971, and was attended by fourteen teachers, seven of whom were MTI members and seven of whom were not; that as a result of said meeting additional three documents, made a part hereof as Appendix "B", "C", and "D", were prepared and printed and hand delivered or mailed to certain teachers, who distributed said documents to other teachers during their free periods in the various schools between December 2nd and 6th, 1971.

11. That on December 6, 1971 Reed, upon his request, was given permission by the Principals of Van Hise Elementary and Junior High Schools to circulate the "petition" among teachers in said schools on Reed's free time, as well as permission to use the teachers' school mailboxes for the distribution of a letter, made a part hereof as Appendix "E".

12. That a regular meeting of the Board was held during the evening of December 6, 1971; that among others present at said meeting, were officers and representatives of MTI, as well as three to four hundred teachers, who were members of MTI; that Reed and Holmquist were also present; that during a portion of said meeting, described in the meeting agenda as "Public Appearances", the president of MTI, Paul Du Vair, addressed the Board, urging the Board to resume negotiations with MTI and to reach an agreement on the provisions of the 1972 collective bargaining agreement; that upon the conclusion of his remarks, Du Vair presented to the Board a statement, containing the signatures of between thirteen and fourteen hundred teachers, setting forth that "We the undersigned wish the parties to resume negotiations and reach agreement as quickly as possible"; that Holmquist was also permitted to speak to the Board; that Holmquist prefaced his remarks to the Board by stating:

> "My name is Albert Holmquist. I reside at 5626 Crestwood Place. I am another teacher. I represent an informal committee of 72 teachers in 49 schools. I would like to inform the Madison Board of Education, as I already have the Madison Teachers Incorporated, about the results of an informational survey regarding one of the thirteen or so items now on the conference table and one of the main items that will certainly be included in some form in the new package.";

that Holmquist then read to the Board the text of the Petition he had circulated among the teachers dated December 6, 1971; that in so doing he stated as follows:

> "To: Madison Board of Education, Madison Teachers Incorporated. We the undersigned ask that the fair-share proposal (agency shop) being negotiated by

> Madison Teachers Incorporated and the Madison Board of Education be deferred this year. We propose the following: 1) The fair-share concept being negotiated be thoroughly studied by an impartial committee composed of representatives from all concerned groups. 2) The findings of this study be made public. 3) This impartial committee will ballot (written) all persons affected by the contract agreement for their opinion on the fair share proposal. 4) The results of this written ballot be made public."
>
> "We feel this study necessary because neither the board's negotiators who have placed entirely too much emphasis on this one point nor Madison Teachers, Inc. which speaks euphemistically about the 'whole package' and therefore is not issue specific ... Neither has properly addressed the serious issue of fair-share and agency shop. We find much confusion in the proposal as it stands and even more on the part of teachers' interpretations of it. For evidence, 417 teachers from the 31 schools which represents 53% of the total number of these faculties of these schools ... who have called in to this hour have signed the petition on the first day it was taken into their schools. Due to this confusion, we wish to take no stand on the proposal itself, but ask only that all alternatives be presented clearly to all teachers and more i importantly to the general public to whom we are all responsible. We ask simply for communication, not confrontation."

13. That at the conclusion of Holmquist's remarks, Mrs. Doyle, President of the Board, asked Holmquist, "Do you intend to communicate these petitions to the Board when you have them all."; that Holmquist replied in the affirmative; and that no other Board member spoke to Holmquist on the matter; that immediately after its regular public meeting the Board went into executive

session, during which the unresolved issues, including arbitration of teacher nonrenewal and dismissal and fair share were discussed by the Board; that as a result of such discussion a resolution was adopted by the Board as follows:

> "It was moved and seconded to accept the total package as presented including arbitration for dismissal of non-probationary teachers and *not* including agency shop; if the MTI does not accept this as a total package the offer of arbitration is withdrawn".

14. That on December 7, 1971, authorized representatives of MTI met with authorized representatives of the Board in a previously scheduled negotiations meeting; that Dr. Ritchie, Superintendent of Schools, and an agent of the District, at the opening of such negotiation meeting, gave the representatives of MTI a copy of the above resolution, informing such representatives that such resolution stated the Board's position, indeed "that this was the deal"; that discussions concerning the Board's position and fair share took place during such meeting; that the Board's representatives remained adamant in their position and in the afternoon of that day the parties reached tentative agreement upon MTI accepting the Board's position and that such tentative agreement was accepted as the Agreement by both parties on December 14, 1971.

Upon the basis of the above and foregoing Findings of Fact, the Commission makes the following

CONCLUSIONS OF LAW

That Joint School District No. 8, City of Madison, Villages of Maple Bluff and Shorewood Hills, Towns of Madison, Blooming Grove, Fitchburg and Burke, and the Board of Education of Joint School District No. 8, et al, in permitting teacher Albert Holmquist to appear and speak at a meeting of the Board on December 6, 1971, as a representative of a minority of the teachers in its employ, on the matter of the fair share agreement, a matter subject to negotiations between said Municipal Employer and Madison Teachers, Inc., the majority bargaining representative of certificated teaching personnel in the employ of said Municipal Employer, violated its duty to bargain in good faith with Madison Teachers Inc., and Joint School District No. 8, City of Madison, Villages of Maple Bluff and Shorewood Hills, Towns of Madison, Blooming Grove, Fitchburg and Burke, and the Board of Education of Joint School District No. 8, et al, thereby interfered with the rights of employes represented by Madison Teachers Inc. to bargain collectively with representatives of their own choosing, and further thereby Joint School District No. 8, City of Madison, Villages of Maple Bluff and Shorewood Hills, Towns of Madison, Blooming Grove, Fitchburg and Burke, and the Board of Education of Joint School District No. 8, et al, committed prohibited practices within the meaning of Sections 111.70 (3) (a) 4 and 1 of the Municipal Employment Relations Act.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes the following

ORDER

IT IS ORDERED that Joint School District No. 8, City of Madison, Villages of Maple Bluff and Shorewood Hills, Towns of Madison, Blooming Grove, Fitchburg and Burke, and the Board of Education of Joint School District No. 8, et al,

1. Shall immediately cease and desist from permitting employes, other than representatives of Madison Teachers Inc., to appear and speak at meetings of the Board of Education, on matters subject to collective bargaining between it and Madison Teachers Inc.

2. Take the following affirmative action which will effectuate the policies of the Municipal Employment Relations Act;

(a) Officially incorporate the instant Findings of Fact, Conclusions of Law and Order in the minutes of the Board of Education.

(b) Immediately notify Madison Teachers Inc. that they will not permit any employe in the bargaining unit represented by Madison Teachers Inc., other than a representative of Madison Teachers Inc., to appear and speak on matters subject to collective bargaining between them and Madison Teachers Inc.

(c) Notify the Wisconsin Employment Relations Commission within thirty (30) days of the receipt of a copy of this Order as to what steps they have taken to comply herewith.

Given under our hands and seal at the
City of Madison, Wisconsin, this 13th day of September, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney /s/*
Morris Slavney, Chairman

Zel S. Rice II /s/
Zel S. Rice II, Commissioner

Jos. B. Kerkman /s/
Jos. B. Kerkman, Commissioner

APPENDIX "A"

"Dear Fellow Madisonian Educator,

E. C. — O. L. O. G. Y.

*E*ducator's *C*hoice — *O*bligatory *L*eadership *O*r *G*rievance by *Y*ou

SAVE FREEDOM OF CHOICE

A Closed Shop (agency shop) Removes This Freedom

1. Does an organization which represents the best interests of teachers and pupils NEED mandatory membership deductions?
2. Need relationships between administrators and teachers be further strained by LEGALLY providing for mandatory adversary camps?
3. Should minority voices be mandatorily SILENCED?
4. Could elimination of outside dissent produce NON-RESPONSIVENESS to change?
5. And ...

isn't this lack of FREEDOM OF CHOICE undemocratic?

SUPPORT FREEDOM OF CHOICE —
OPPOSE AGENCY SHOP

I wish to maintain freedom of choice:

I oppose agency shop on principle _____

I oppose agency shop and would sign a petition stating so _____

I oppose agency shop and would work actively to maintain freedom of choice _____

Let us hear from YOU.

Al Holmquist /s/
Al Holmquist
Ralph Reed /s/
Ralph Reed
Teacher co-chairmen"

E.C.-O.L.O.G.Y.
P.O. Box 5184
Madison, WI 53705

APPENDIX "B"

"Dear Colleague,

1) The enclosed petition was drawn up Thursday night by a group of teachers.

2) Accompanying it is a letter of current, pertitant information. It may be used as a source for your own personal reference, posted on bulletin boards or even dittoed for mailbox stuffing (which is allowable). Please add information you may have to make it as specific to your situation as possible. (as below)

3) The following people in your school:

have written they would also work actively

have written they would sign the petition

have written they are opposed to the concept of agency shop on principle

Thirty-five others mailed in unsigned responses but indicated that they would sign the petition.

4) It is imperative to work quickly. We would like to present a first-day's total to MTI and the Board of Education this MONDAY night, Dec. 6. (It is the night of the last board meeting under our present contract)

Please call in 1) the number of signers
2) the percentage of your faculty contacted the first day

_____between 5 and 7 p.m.

5) When you have contacted everyone in your school affected by the contract please return the petition to Concerned Educators, Box 5184, Madison, WI 53705.

Who will sign for certain?

Who will sign after others do?

Which others?

Who might sign if you ask them first but might not sign later?

Who won't sign? (Don't be sure. Half of the people who wrote the petition are MTI members. Many MTI'ers responded to the original letter. And this point *was* included in the negotiation package

by a close vote of the board of directors)

Would a closed system be as responsive? to individual members

Isn't a loyal opposition necessary?

Freedom of Choice?

Ability to influence an organization by withholding of dues?

Thank you for your efforts and your support.

The Committee"

APPENDIX "C"

"POINTS OF INFORMATION

1. FAIR-SHARE, agency shop, and union shop need not be the same thing

   fair-share — the bargaining unit collects that *portion* of dues that goes *directly* toward negotiation and contract administration costs

   agency shop — the bargaining unit collects uniform dues and fees from members and non-members as a condition of employment

   union shop — you have thirty days to join the union or you have no job.

2. However, the current fair-share agreement proposal, in its language, EQUATES fair-share agreement and agency shop by definition.

'It is understood and agreed by and between the parties hereto that the employer will deduct from the monthly earning of the employees in the collective bargaining unit a fair share, SUCH AMOUNT BEING the monthly dues certified by Madison Teachers as the current dues UNIFORMLY REQUIRED OF ALL MEMBERS.'

3. This proposal, as is, was included as a point for negotiation by a close vote of the MTI board of directors.

4. MTI has refused to poll its membership on this perhaps critical individual point of negotiation.

5. It is true that legally, one need not join MTI under the fair share proposal.

6. However, even with a real fair-share agreement (as well as with the present proposal) everyone covered by the contract *must* become a MEMBER OF WEA and NEA. Right now part-time teachers who pay partial MTI dues *must* pay full NEA and WEA dues as full members.

7. For even a real fair-share proposal to take effect it must have the support of the majority of all affected by the contract.

8. The enabling legislation, Senate bill 198A, is constitutional according to our legal advice.

9. The petition is not to be construed as anti-MTI. All that is asked is that the present fair-share proposal be deferred this year until adequate study and dissemination of information — and *your* opinion is known.

for communication, not confrontation"

APPENDIX "D"

"To: Madison Board of Education

Madison Teachers, Incorporated

We the undersigned ask that the fair-share proposal (agency shop) being negotiated by Madison Teachers, Incorporated and the Madison Board of Education be deferred this year. We propose the following:

1) The fair-share concept being negotiated be thoroughly studied by an impartial committee composed of representatives from all concerned groups.

2) The findings of this study be made public.

3) This impartial committee will ballot (written) all persons affected by the contract agreement for their opinion on the fair-share proposal.

4) The results of this written ballot be made public.

_____ _____

_____ _____

_____ _____

_____ _____"

APPENDIX "E"

"Dear fellow Van Hise Teachers, Dec. 6, 1971

In the next few days you will be asked to sign a petition asking that the FAIR SHARE (AGENCY SHOP) proposal being negotiated between M.T.I. and the Board of Education be deferred until the topic has been studied,

information from the study has been disseminated to all concerned, and all teachers have been balloted as to their position on this important issue.

Please consider the following informational points:

1. FAIR-SHARE, agency shop, and union shop need not be the same thing.

   Fair-share: The bargaining unit collects that *portion* of dues that goes *directly* toward negotiation and contract administration costs.

   Agency shop: The bargaining unit collects uniform dues and fees from members and non-members as a condition of employment.

   Union shop: All employees have thirty days to join the union or they loose their job.

2. The current fair-share proposal, in its language, EQUATES fair-share agreement and agency shop by definition.

   'It is understood and agreed by and between the parties hereto that the employer will deduct from the monthly earning of the employees in the collective bargaining unit a fair share, SUCH AMOUNT BEING the monthly dues certified by Madison Teachers Incorporated, as the CURRENT DUES UNIFORMLY REQUIRED OF ALL MEMBERS.' (emphasis mine)

3. This proposal was included as a point for negotiation by a very close vote of the MTI board of directors.

4. MTI has refused to poll its membership in this perhaps critical individual point of negotiation.

5. Legally, it is true that one need not join MTI under the fair share proposal.

6. However, even with a 'real' fair-share agreement (as well as with the present proposal) everyone covered by the contract *must* become a MEMBER of WEA and NEA. Presently, part-time teachers who pay partial MTI dues MUST pay FULL NEA and WEA dues as full members.

7. For any fair-share proposal to take effect it must have the support of a majority of all affected by the contract.

8. The enabling legislation, Senate bill 198A, is constitutional according to our legal advice.

9. The petition being presented is NOT to be construed as anti-MTI. All that is asked is that the present fair-share proposal be deferred this year until adequate study and dissemination of information — and *your* opinion is known.

For communiciation, not confrontation,

Ralph K. Reed /s/
Ralph Reed
Rm. 111"

See me if you have
additional questions not
covered above.

JOINT SCHOOL DISTRICT NO. 8, CITY OF MADISON, VILLAGES OF MAPLE BLUFF AND SHOREWOOD HILLS, TOWNS OF MADISON, BLOOMING GROVE, FITCHBURG AND BURKE, AND THE BOARD OF EDUCATION OF JOINT SCHOOL DISTRICT NO. 8, et al, VIII, Decision No. 11271

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Pleadings

In its complaint MTI alleged that, by permitting Holmquist, as an individual employe and as the representative of seventy-two other employes, to attempt to influence the School Board, hereinafter referred to as the Board, on behalf of the District, in its decision regarding the issue on the fair-share agreement as proposed by the MTI during bargaining, the District negotiated with an individual employe or a group of employes, and that thereby the Board interfered with and restrained bargaining unit employes in their right to bargain collectively through representatives of their own choosing in violation of Sec. 111.70 (3) (a) 1 of the Municipal Employment Relations Act, hereinafter referred to as MERA, and further, that the Board thereby failed and refused to bargain collectively with MTI in violation of Sec. 111.70 (3) (a) 4 of MERA. MTI would have the Commission order the Board to cease and desist from such activity "now and in the future", and further requests the Commission to order that the Board expunge from its official minutes "any and all reference to the remarks" made by Holmquist at the December 6, 1971 meeting of the Board, and further that the Board expunge from its

minutes and records "any reference to any written petitions, including such written petitions themselves" received by the Board from Holmquist on December 6, 1971.

In its answer the District contended that Holmquist's remarks made at the Board meeting of December 6, 1971 "involved solely the giving of a position statement at an ordinary meeting of a public body and thus cannot be labeled as negotiating", that Holmquist was not questioned by the Board, and that the Board refrained from any discussion or conversation with Holmquist during and after his statement. The District denied the commission of any prohibited practices and requested that the complaint be dismissed.

The Facts

All the facts dispositive of the issues involved herein are set forth in detail in the Findings of Fact.

The Positions of the Parties

As indicated in the preface of the Commission's decision both the MTI and the District filed briefs./[1] Upon permission from the Commission, briefs amicus were filed by the Wisconsin Education Association and the National Right to Work Legal Defense Foundation. The Commission appreciates the thoroughness and quality of said briefs, and in that regard commends those who prepared same./[2]

/[1]MTI also filed a reply brief.

/[2]A review of the record, which refreshes a recollection of the hearing, warrants complimenting Attorney Kelly and Attorney Kops for their attitude, conduct and competency in making the record in the instant matter.

The Position of MTI

MTI sets forth two basic arguments in support of its complaint that the District committed the prohibited practices as alleged in the complaint filed herein. It contends that:

1. "In permitting a representative of a minority of its bargaining unit employes to appear at a public meeting of the Board and to speak to the Board on fair share, a mandatory subject of bargaining, the Board failed and refused to collectively bargain with MTI as the representative of a majority of its employes in violation of Section 111.70 (3) (a) 4, Wis. Stats., and interfered with the right of said bargaining unit employes to collectively bargain through MTI as the representative of their own choosing in violation of Section 111.70 (3) (a) 1, Wis. Stats."

2. "A Municipal Employer cannot base its decision to reject a fair share proposal on a poll of its bargaining unit employes."

In support of its first contention MTI argues that the Board was bound to "deal exclusively" with it as the exclusive representative of its teachers, and that therefore a minority union,/[3] or a minority group of employes,/[4] cannot negotiate with the Board and likewise the Board is prohibited from negotiating either with a minority union or a minority group of employes, and if it does so, the Board violates its duty to bargain with the exclusive bargaining representative.

In said regard MTI argues:

> "Holmquist as the representative of a minority of teachers was permitted to discuss with the Board, i.e. to

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/[3]*Milwaukee Board of School Directors v. WERC*, 42 Wis 2d 637 (1968).

/[4]*M & M Chevrolet Co.* (4083-A) 4/56.

convey to the Board the minority's ideas and thoughts on a mandatory subject of bargaining, and to possibly influence the decision of the Board as concerns such subject. Whether a two-sided conversation took place or not is immaterial. Holmquist as a minority representative was permitted to influence the Board in its decision making role and on a question of conditions of employment. Whether the remarks made by Holmquist did in fact influence the Board in its decision making process is also immaterial. His remarks could have had that affect. Indeed a strong inference arises from the facts in this matter that his remarks did so influence the Board in its bargaining position.

Immediately after the public meeting during which such remarks were made, the Board went into executive session. During such session it discussed the unresolved issues of fair share, the issue discussed previously by Holmquist, and arbitration of teacher nonrenewals and dismissals. Up to that time the Board had refused to accept MTI's proposals as concerns either issue. During such discussion the Board changed its position in this regard. Indeed the Board by resolution agreed for the first time to accept binding arbitration of teacher renewals and dismissals and at the same time resolved to reaffirm its position against fair share. In effect the Board to some extent accepted the position proposed by the minority."

In support of its second principal contention MTI argues, in material part, as follows:

"If a majority bargaining representative proposes during negotiations that the parties agree upon a fair share agreement incorporating the same into a written collective agreement, the employer must meet and confer with such majority representative at reasonable times, in good faith, with respect to such conditions of

employment, with the intent of reaching an agreement thereon. While the employer is not compelled to agree to any fair share agreement proposed or to make any concession concerning the same, it is required to meet and confer at reasonable times relative to such agreement, in good faith with the intention of reaching agreement. The employer cannot negotiate publicly or privately with a minority as concerns fair share agreements or base its refusal to accept fair share on the premise that a number of bargaining unit teachers do not support a fair share agreement.

The statute does give the employer the right to petition the Commission for a referendum and does provide that such a petition must be supported by proof that at least 30% of the employees in the bargaining unit desire that the fair share agreement be terminated.

The statute therefore clearly permits the employer to receive from its employes, and through other than the majority representative, proof that such employes do not favor the fair share agreement. Obviously the proof may be obtained in unsolicited employe petitions.

When may the employer receive such proof? Certainly not during negotiations when in its decision making role it must decide whether to agree to a fair share proposal or not. It may only receive such information when a fair share agreement is already agreed upon by the employer and the majority bargaining representative and the question is does a majority of the bargaining unit employes favor the continuance of such agreement. ...

ERB 15.06 (of the Commission's rules) entitled "Stipulation for Referendum Seeking Authorization to Implement Fair-Share Agreement" provides that when a municipal employer and the majority

bargaining representative of its employes in their negotiations with respect to the inclusion of the fair-share agreement in their collective bargaining agreement, jointly desire to determine whether the employes in the involved collective bargaining unit favor the implementation of a fair-share agreement, such municipal employer and such labor organization, or anyone lawfully authorized to act on their behalf, may file a stipulation for a referendum for said purpose. Such stipulation must contain a statement by the municipal employer that it will incorporate a fair-share agreement into the collective bargaining agreement if the required number of employes vote in favor of implementing such agreement. Conversely, such Stipulation must contain a statement by the labor organization that it agrees to withdraw its request in negotiations for a fair-share agreement in the event the required number of employes do not vote in favor of the implementation of such agreement. Resort to such a stipulation and employe self determination through the election process then can only occur *after* the employer and the majority labor organization have come to agreement on a fair-share agreement.

There simply is no provision allowing or permitting the employer to poll his employes or to accept and consider a written poll of his employes as part of the decision making process in deciding whether to accept or reject a fair-share agreement.

An election may be had, in which employes can approve or disapprove of the continuation of a previously agreed upon fair-share agreement, pursuant to a Petition or a Stipulation. An election may also be had in which employes indicate whether or not they favor the implementation of a fair-share agreement, but only if the employer states in writing that it will incorporate a fair-share agreement into the collective bargaining agreement upon a favorable employe vote.

The employer cannot refuse or reject a fair-share agreement proposed in negotiations basing such refusal on the fact that a number, even a majority, of its bargaining unit employes have disclosed to it orally or in writing that they do not favor fair share.

Chaos would result if the rule were otherwise. If an employer could rely on petitions signed by a substantial minority of its employes or even a majority of its employes as the basis for rejecting fair-share agreements, the secret balloting provision of the election process established by the WERC would be rendered valueless.

A multitude of legal questions could and would arise as to the validity of the signatures on the petition, whether the employes understood what they were signing, whether the petition was unsolicited or whether it was obtained directly or indirectly through improper management persuasion, and so on.

Fair-share agreements simply are not unique subjects of bargaining upon which the employer can bargain with the minority either privately or in public.

In the instant matter the Board permitted Holmquist as the representative of an informal minority of bargaining unit employes to appear at a public meeting of the Board and to speak against the fair-share arrangements proposed by MTI as the majority bargaining representative. In doing so the Board consciously undermined the bargaining position of MTI as the majority representative of its bargaining unit employes."

The District, in support of its answer that the complaint should be dismissed, in its brief sets forth three basic contentions as follows:

1. The Board in permitting Holmquist to speak and present the petition involved, during an ordinary Board meeting and in the presence of MTI officials, acted within its duty "to recognize and respect the constitutional rights of all its employees to speak freely and petition their government.

2. The Board did not violate its duty to bargain with MTI or interfere with the rights of its employes, when in the presence of MTI officers "it merely listened to a representative of an informal committee of bargaining unit employees during the public appearance portion of a regularly scheduled meeting, read a petition concerning 'fair share' circulated among Madison teachers and heard that 417 teachers had signed the petition".

3. The Board acted "in conformity with its responsibilities under Section 111.70" in listening to Holmquist regarding negotiable matters, receiving information, thoughts or sentiments of employes in the bargaining unit "in the absence of an express or implied desire by the employer to deal directly with the employes and affirmative action soliciting or inducing the employees to deal directly with" the board.

In support of its first argument the District contends that the First Amendment to the federal constitution,/[5] as well as Article I, Section 3 of the Wisconsin Constitution,

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/[5]Citing Pickering v. The Board of Education, 391 U.S. 563 (1968).

guarantees the right of persons to petition the government or any party thereof, and the right to speak and publish sentiments freely. Therefore the District concludes that all teachers in its employ, as citizens, "possess the right to speak freely and the right to petition" the Board, and that the Board has the responsibility to refrain from obstructing such right.

Secondly the District argues that it recognizes its duty to bargain exclusively with MTI on the issue of a fair share agreement, however, that the Board's action in the meeting involved with respect to listening to Holmquist did not constitute a failure in its duty to bargain with MTI.

In support of its third basic argument the District, in its brief argues, in part as follows:

"There is no evidence in this record that either the Board of Education recognized an obligation or intended to assume an obligation to meet and confer with Mr. Albert Holmquist or his group at reasonable times with an intention of reaching an agreement with those individuals. There is no evidence, expressed or implied, that the Board wished to deal with persons other than the certified representative. Further, there is no evidence to indicate the Board or Administration solicited or induced direct dealing with employees in derogation of the collective bargaining representative. The Board merely received information. Listening is not bargaining.

It is also clear Mr. Holmquist's remarks cannot be considered 'collective bargaining' within the statutory definition. Mr. Holmquist merely wished to inform the *bargaining parties* that some teachers were confused about the 'fair-share' proposal presently on the bargaining table. His testimony indicates that he was

not interested in establishing a bargaining relationship with the Board of Education. On the contrary, his remarks clearly recognized that Madison Teachers Incorporated was the exclusive bargaining representative for the teachers. His efforts were aimed at getting the bargaining parties off dead center, not undermining the majority representative.

Mr. Holmquist recognized the Board of Education and Madison Teachers Incorporated as the sole bargaining parties for the teachers in the District. Additional support for this suggestion can be seen in the petition itself which was read to the Board. The petition is addressed to Madison Teachers Incorporated and the Board of Education. Transcript Page 94.

The act of the Board of Education in permitting Mr. Holmquist to speak cannot be considered 'collective bargaining' in light of the statutory definition.

Section 111.70 (4) (d) of the Wisconsin Statutes (1971) provides additional support for the Respondent's position that an employer may receive information from and listen to bargaining unit employees concerning bargaining matters without running afoul of its responsibilities under the act.

The only contact between Mr. Holmquist and the Board of Education or the School Administration was in the presence of the officials of the majority representative of the teachers of the District. Indeed, on December 6th, the President, Executive Secretary and Chief Negotiator for Madison Teachers were present in the audience when Mr. Holmquist made his statement. The statute safeguards the right of an employee to communicate with an employer. In this came the Board merely listened and, in so doing, allowed what is declared lawful by statute.

Finally, the legislature has provided a procedure by which a union security agreement entitled 'Fair-Share' may be terminated. Section 111.70 (2) Wisconsin Statutes (1971). This procedure may be initiated by an employer or a labor organization upon a 30% showing of interest by the employees in the bargaining unit. This section thus assumes that unsolicitated information from employees concerning 'fair-share agreements' may be received after an agreement on fair-share by the parties. It thus further assumes that receipt of information by the employer after an agreement from dissenting members of the bargaining unit is not 'bargaining' or 'negotiating' with third parties.

The Complainant argues that this legislative enactment merely allows the receipt of information from employees after agreement and, therefore, does not presume that an employer may receive information prior to agreement on fair-share. However, the Complainant misses the point of the argument. Complainant's argument suggests that the receipt of information on negotiable matters from employees prior to the agreement is bargaining while receipt of information after agreement with the bargaining representative is not bargaining. He presumes that the legislature would allow bargaining by third parties after an agreement had been reached but prevent bargaining by third parties before an agreement was reached. This argument does not make sense.

It is more consistent with the intent of the act to suggest that the legislature understood that the mere receipt of information is not 'bargaining' prior to or after a collective bargaining agreement is reached and thus, it established a procedure where it is presumed the employer will receive information. The Complainant's argument suggests that the legislature

would sanction activity considered direct bargaining after an agreement was reached but prohibited activity considered direct bargaining before agreement. The Respondent suggests the legislature understood listening and receiving information is not bargaining."

In support of its argument that an employer may receive information concerning bargaining matters from employes and discuss matters of collective bargaining with employes and listen to negative information "about the majority representative without violating its duty to bargaining and without interfering with the bargaining rights of its employes", the District cites a number of decisions of the National Labor Relations Board./[6]

Further, the District would distinguish the instant events from the applicability of Wisconsin Supreme Court's decision in *Milwaukee Board of School Directors, supra,* contending that the Board meeting of December 6th was "an ordinary meeting of the Board" and not "a public bargaining session or the meeting at which the Board was to take final action on the Negotiated Agreement with the majority representative". In addition the District contends that herein Holmquist merely gave a position statement, and that the "Supreme Court suggested that under these circumstances it would have some difficulty in labeling the conduct 'negotiating' ", and therefore not violative of the Act.

/[6] *White Sulphur Springs Co.* CA DC (1963) 316F. (2d) 410; *Lawn Boy Div. Outboard Marine Corp.*, 143 NLRB 535, (1963); *Baldwin County Electric Membership Corp.*, 145 NLRB 1316 (1964); *Coast Broadcasting Corp.*, 151 NLRB No. 117 (1965); *American Printing Co.*, 173 NLRB No. 17 (1968); *Tobasco Concrete Co.*, 177 NLRB No. 101 (1965).

The District contends "to suggest that a municipal employer must stifle a minority organization would obviously be action that would discourage membership in a minority organization and encourage membership in the majority union, a clear violation of Section 111.70 (3) (a) 3 of the Wisconsin Statutes."

Finally, the District argues that Article II, 2 of the collective bargaining agreement existing between the parties contemplated the activity involved herein.

In its brief amicus the National Right To Work Legal Defense Foundation supports the argument of the District that to require the Board to "stifle the speech of a teacher removes the constitutional protection for freedom of expression"; that the *Milwaukee Board of School Directors case* is distinguishable from the instant matter, contending that Holmquist's remarks "cannot be interpreted as negotiation"; that there is no evidence that the Board was motivated to undermine the MTI as the certified bargaining representative; and that Sec. 111.70 (4) (d) 1 protects the right of individual employes to present grievances.

In its reply brief MTI contends that had the Board denied Holmquist the opportunity to speak it would not have infringed upon or abridged Holmquist's right of free speech, since "freedom of speech" cannot be used to engage in conduct constituting a refusal to bargain in good faith with MTI as the exclusive bargaining representative.

With respect to the District's argument that federal cases support a conclusion that in permitting Holmquist to speak the Board did not fault its duty to bargain with MTI, the latter argues that the cases cited by the District are not

in point, but, on the contrary, the factual situations therein are distinguishable from those in the instant proceeding. MTI attacks the District's contention that the Board acted in conformity with its responsibilities under MERA in listening to bargaining unit employes on negotiable matters or discusses such matters with employes in the absence of the bargaining representative in the absence of an expressed or implied desire "to deal directly with the employes and affirmative action soliciting or inducing employes to deal directly" with the Board. MTI argues that a finding of prohibited interference does not require a finding of anti-union animus./[7]

Further, MTI contends that the total conduct of the Board's agents, including the permitting of the distribution of letters to teachers through teacher mailboxes, the circulation of the petition in the school buildings, all with the permission of the principals involved, permitting Holmquist to speak at the Board meeting, and the timing of the Boards's final offer, are supportive of a conclusion that the Board committed prohibited practices as alleged.

In reply to the defense that the Board's action with respect to the receipt of the petition was consistent with Article II, 2 (d) of the collective bargaining agreement between the parties, MTI replies as follows:

> "Section 2 (c) makes it crystal clear that matters which are the proper subject of negotiations are to be dealt with by the authorized agents and only the authorized agents of the respective parties. It is

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/[7] *City of Milwaukee* (8420) 2/68.

> improper for a principal to the agreement on the one side and a group which is neither principal nor agent, on the other side, to discuss matters which are proper subjects of negotiation. Neither party in such a discussion is properly taking part in such discourse. Any such action, by the express terms of Article II 2(c) is in direct violation of the Agreement.
>
> Article II 2 (d) simply makes it clear that each party has the duty to bring to the attention of the other any such deviation from the proper negotiating process. If others than an authorized party should bring matters, which are the proper subject of negotiations, to one of the parties to the Agreement, such party has the duty to promptly notify the other party of that fact so that any problems caused by such improper conduct may be quickly resolved. Section 2 (d) provides a procedure to remedy improper activity in negotiations; its purpose is not to provide a vehicle to admit unauthorized parties into the negotiation process.
>
> When paragraphs 2 (c) and 2 (d) of Article II (A) of the Negotiated Agreement, entitled 'Conference and Negotiation' are read together, as they must be, it is clear that the Negotiated Agreement does not support the position advanced by the Respondent."

In reponse to the Board's contention that the receipt by the Board of a showing of interest opposing a fair share agreement does not constitute bargaining or negotiation, MTI contends that MERA does not permit a municipal employer to accept or consider a written poll of its employes as part of its decision with respect to the acceptance or rejection of a proposal with respect to a fair share agreement, since the statute does not require any balloting of employes prior to the implementation of a fair share agreement, and that a showing of interest executed

by at least 30% of the employes in the unit is necessary only to initiate a vote to determine whether an existing fair share agreement should be continued.

Finally, the MTI contends that Holmquist's appearance and remarks before the Board cannot be considered a grievance as contemplated in Sec. 111.70 (4) (d) of the Act.

The Wisconsin Education Association, in its brief amicus, supports MTI's argument that a ruling that the Board violated its duty to bargain would not abridge Holmquist's constitutional rights; that anti-union animus need not be established to find a refusal to bargain in good faith; and that the only real issue herein involves whether the receipt of Holmquist's communication constitutes a violation of the Board's duty to bargain only with the exclusive representative. In that regard the WEA contends:

> "Holmquist told the Board what it wanted to hear, what it hoped would have a negative influence on the union's bargaining position. Would the Board have been as anxious to hear a speaker in opposition to Holmquist, or ten speakers, or 1,200 speakers? Would it care to hear 1,200 speakers on each of the 13 unresolved items that were then on the table? Would it care to hear 1,200 speakers on all of the items that were originally put on the table? And if 1,200 speakers is distinguishable from one speaker by virtue of their numbers, where would the line be drawn? The 'obligation to treat with the true representative ... and the negative duty to treat with *no* other'/[8] was a wise statutory policy. It has stood the test of time.

/8*NLRB v. Jones & Laughlin Steel Corp.* 501 U.S. 1 (1937).

Because of the wisdom of the policy and because of the havoc that the opposite could wreak on collective bargaining as a successful institution, all dealings outside of the recognized representative should be discouraged. In applying the term 'bargaining' to fact situations, it should be given broad construction to include everything but the most insubstantial, innocuous, and indeed unplanned communication between employers and employees. It should certainly include situations such as the present one where:

1. It related specifically to a demand the union had on the table;
2. it involved not a person speaking only as an individual, but rather as a representative;
3. it was preceded by planning and effort to gain support from other employees;
4. it was presented in a formal way at a meeting of the Board with all members present;
5. it was specifically intended to influence the Board in its dealings with the Union.

A contrary ruling in a case such as this would only be a formal invitation to dissident employees to address their employers on wages, hours, and conditions of employment. It would be an invitation to unions to stack employer's meetings with loyalists to defend their bargaining positions. It could make a mockery and a shambles out of collective bargaining."

Discussion

There are four basic issues which the Commission must determine herein. They are as follows:

1. Would the Board have violated Holmquist's right of constitutional free speech by denying him the opportunity to speak and orally present the petition involved?

If the Commission finds in the negative on Issue 1:

2. In permitting Holmquist to speak and orally present the petition, did the Board violate its statutory duty to bargain with MTI as the exclusive collective bargaining representative?

3. Does Article II, A of the collective bargaining agreement permit the activity involved without affecting the Board's duty to bargain?

4. Does the fact that Holmquist's presentation before the Board related to MTI's fair share proposal affect the Board's duty to bargain?

Issue 1

Holmquist appeared and orally presented the petition involved to the Board, not as an agent of MTI, the exclusive collective bargaining representative, but as a claimed representative of a minority of teachers who were opposed to the Board's granting of a fair share agreement. Our Supreme Court in *Milwaukee Board of School Directors, supra,* rejected the contention that prohibiting a representative of a minority union to speak before the school board, while the latter had not completed its negotiations with the majority organization, violated the constitutional rights of said minority representative./[9] We see no distinction in the fact that Holmquist did not represent a "minority organization". He did in fact represent a minority of the teachers, whose views were opposed to those of MTI with respect to a fair share

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/[9] The Court reversed the Commission's conclusion in said regard.

agreement. Therefore we conclude that the Board would not have violated Holmquist's constitutional right of free speech by denying him the opportunity to speak and orally present the petition involved.

Issue 2

In *Milwaukee Board of School Directors, supra,* the school board involved, on two separate occasions denied a representative of a minority organization the opportunity to speak at its open meeting. In said case our Supreme Court stated ".... if the minority union representative is permitted to influence the decision of the school board by his argument, then he is truly negotiating". Holmquist intended to influence the Board on the fair share issue. His statement is clear to that matter. After the public meeting the members of the Board went into executive session, returned and announced its offer to the MTI representatives, which rejected a fair share agreement. Whether the Board rejected the fair share proposal as a result of, or not a result of, Holmquist's remarks, is not necessary for the Commission to determine. The fact is that Holmquist's motive and purpose was intended to persuade the Board not to agree to the fair share agreement as proposed by the exclusive collective bargaining representative. The Board's activity with respect to the Holmquist incident, which occurred during the Board's open meeting, constituted an erosion of its duty to bargain exclusively with the MTI and with no other organization, group of employes, or a single employe. The cases cited by the District in its brief are not applicable to the circumstances involved in the instant proceeding.

Issue 3

Article II A. d. of the collective bargaining agreement existing between the parties at the time of the event involved, in our opinion, does not "legalize" the Board's activity with respect to Holmquist's remarks to the Board at its open meeting. The provision involved, when viewed in context with subpara c. of the Article, indicates that the Board and MTI agreed that negotiable subjects may only be negotiated by the Board and the MTI, even though such matters may be brought to the attention of either the Board or MTI. Various supervisory personnel of the Board were aware of Holmquist's activity prior to the open meeting. He could have properly presented his petition to the Board by means other than an appearance at the open Board meeting. If that would have occurred the Board was contractually obligated to immediately inform MTI thereof. Even if the Board members were not aware of Holmquist's intentions at the open meeting, prior to his remarks an inquiry should have been made as to the intent and purpose for which he sought to speak. Had he indicated the purpose of his appearance and remarks, the Board should have denied him recognition and informed him to submit a written statement to both the Board and MTI. Perhaps the recognition of Holmquist and the receipt of his oral statement was not motivated by any anti-union animus on behalf of the Board, nevertheless by so doing the Board did not fulfill its statutory duty to bargain in good faith with the MTI as the exclusive collective bargaining representative.

Issue 4

The pertinent portion of Sec. 111.70 (2) of MERA material to this particular issue reads as follows:

> "... except that employes may be required to pay dues in the manner provided in a fair-share agreement. Such fair-share agreement shall be subject to the right of the municipal employer or a labor organization to petition the commission to conduct a referendum. Such petition must be supported by proof that at least 30% of the employes in the collective bargaining unit desire that the fair-share agreement be terminated. Upon so finding, the commission shall conduct a referendum. If the continuation of the agreement is not supported by at least the majority of the eligible employes, it shall be deemed terminated...."

We do not agree with MTI that the statute does not permit an employer to accept or consider a written poll of its employes as part of its decision to accept or reject a fair share proposal. The statute permits the implementation of a fair share agreement without a referendum among the employes authorizing same. After the implementation of a fair share agreement, either the employer or a labor organization may file a petition for a referendum to determine whether the employes involved desire the continuation of the fair share agreement. Such a petition must be supported by a showing of interest of at least 30% of the employes in the unit involved. There is nothing in the statute which prohibits an employer from receiving a showing of interest opposing the fair share agreement prior to the implementation of a fair share agreement. The rules of the Commission provide for a stipulation requesting a referendum prior to implementation of a fair share agreement, provided therein the employer agrees to implement same should the required number of employes favor same, and, further, providing the union involved

agrees to withdraw its fair share proposal should the required number of employes not vote in favor thereof./[10]

The presentation of a showing of interest by the employes may very well have an impact on whether the parties will execute such a stipulation. And if so, the results of the referendum would be binding, and thus stabilize any possible issue with respect to the implementation of a fair share agreement. If the employes vote in favor of a fair share agreement, and such an agreement is implemented following the referendum, pursuant to the rules of the Commission,/[11] an isolation period for the conduct of a subsequent referendum is established, thus further stabilizing the collective bargaining relationship.

However, in the instant proceeding, the manner in which the Board received the "showing of interest", namely permitting Holmquist to speak on a bargaining issue at an open Board meeting, exceeded the bounds of permissable conduct with reference to the receipt of a showing of interest requesting the conduct of a referendum, either seeking an initial referendum or, assuming an existing fair share agreement, a subsequent referendum.

Conclusion

In accordance with the above rationale the Commission has concluded that the District, by its Board, committed prohibited practices as alleged in the complaint. The Commission does not deem it necessary to effectuate the policy of MERA to require the Board to

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/[10]ERB 15.03.

/[11]ERB 15.11 (2) (c).

expunge from its official minutes any references therein relating to the appearance and remarks of Holmquist at the December 6, 1971 meeting. However, it has ordered the School Board to incorporate the Commission's decision in its official minutes.

Dated at Madison, Wisconsin, this 13th day of September, 1971.

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

By *Morris Slavney /s/*
Morris Slavney, Chairman

Zel S. Rice II /s/
Zel S. Rice II, Commissioner

Jos. B. Kerkman /s/
Jos. B. Kerkman, Commissioner
Commissioner

STATE OF WISCONSIN DANE COUNTY
CIRCUIT COURT

CITY OF MADISON, Joint School District No. 8, City of Madison, Villages of Maple Bluff and Shorewood Hills, Towns of Madison, Blooming Grove, Fitchburg and Burke and its Agent, The Board of Education, City of Madison Joint School District No. 8,

Petitioner,

vs.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION,

Respondent.

PETITION FOR REVIEW

Now comes the above-named Petitioner by Edwin Conrad, City Attorney and Gerald C. Kops, Assistant City Attorney, their attorneys and respectfully petitions the Circuit Court of Dane County, Wisconsin pursuant to Section 227.16 of the Wisconsin Statutes (1969) for a review of the decision made and entered by the Respondent on September 13, 1972 in its proceeding entitled *Madison Teachers Incorporated v. Joint School District No. 8, City of Madison, et al,* Case No. VIII No. 15210 MP-107, Decision No. 11271 and as the basis of this Petition, respectfully alleges as follows:

1. The Petitioner, City of Madison, Joint School District No. 8 through its agent, the Board of Education of the City of Madison, Joint School District No. 8, operates a school system pursuant to Subchapter II of Chapter 120 of the Wisconsin Statutes (1969). Among the powers granted to the School Board is the power to adopt rules for its meetings and deliberations and the power to employ teachers.

2. Madison Teachers Incorporated is a labor organization and the exclusive collective bargaining representative for all regular full-time and regular part-time certificated teaching personnel employed by the Board of Education, City of Madison, Joint School District No. 8 pursuant to a certification of representation decision of the Wisconsin Employment Relations Board on June 7, 1966, Case No. I No. 9691 ME-150, Decision No. 6746.

3. A regular meeting of the Board of Education was held on December 6, 1971. At that regular meeting of the Board of Education, during the portion of the meeting

entitled "Public Appearances", the Board of Education listened to a teacher-employee of the Board and received the results of a petition circulated among teachers employed by the District.

4. On January 6, 1972, Madison Teachers Incorporated filed a complaint with the Wisconsin Employment Relations Commission alleging that the Board of Education, City of Madison Joint School District No. 8, committed a prohibited labor practice when it listened to the teacher-employee at its regular meeting of December 6, 1971.

5. The Board of Education denied the allegation.

6. A hearing in the matter was conducted on February 28, 1972 by the Wisconsin Employment Relations Commission with Chairman Morris Slavney presiding and Commissioner Zel S. Rice, II also present.

7. On September 13, 1972, the Wisconsin Employment Relations Commission issued Findings of Fact, Conclusions of Law, and an Order in the matter. A memorandum also accompanied the Findings of Fact, Conclusions of Law, and Order.

8. The Wisconsin Employment Relations Commission determined that the Petitioner violated its duty to bargain in good faith with Madison Teachers Incorporated when it listened to a teacher-employee at its regular meeting and interferred with the rights of employees represented by Madison Teachers Incorporated to bargain collectively with representatives of their own choosing and thereby committed prohibitive labor practices within the meaning of Section 111.70(3)(a) 4 and 1 of the Municipal Employment Relations Act.

9. Pursuant to this determination, the Wisconsin Employment Relations Commission ordered the Board to cease and desist permitting teacher employees, other than representatives of Madison Teachers Incorporated, from appearing and speaking at meetings of the Board of Education on matters subject to collective bargaining between the Petitioner and Madison Teachers Incorporated. The Commission also ordered the Board to incorporate the Findings of Fact, Conclusions of Law, and Order in the minutes of the Board of Education and immediately notify Madison teachers that the Petitioner will not permit any employee in the bargaining unit represented by Madison Teachers Incorporated other than a representative of Madison Teachers Incorporated to appear and speak on matters subject to collective bargaining between the Petitioner and Madison Teachers Incorporated, and further, notify the Wisconsin Employment Relations Commission within thirty (30) days of receipt of a copy of the Order as to what steps the Petitioner had taken to comply therewith.

10. The Board of Education recognizes its statutory duty to bargain in good faith exclusively with the certified representatives of its employees but contends that full compliance with this statutory obligation does not, should not and cannot abridge its constitutional and statutory rights, privileges and obligations as elected representatives of the people; to listen and receive information at public meetings from its employees on matters of wages, hours and conditions of employment and thus, is aggrieved, interested and directly affected by the decision.

11. The decision of the Wisconsin Employment Relations Board should be reversed on the following grounds:

a) The decision is contrary to Petitioner's constitutional rights, obligations and privileges.

b) The decision of the Respondent is in excess of the statutory authority and jurisdiction of the agency and affected by other errors of law.

c) The decision of the Respondent is unsupported by substantial evidence in the view of the entire record as submitted.

d) The decision of the Respondent is arbitrary and capricious.

WHEREFORE, the Petitioner prays that the Court review the proceedings conducted by the Respondent, the evidence taken thereon and the decision entered therein and reverse said decision of the Wisconsin Employment Relations Commission entered September 13, 1972 in the matter of *Madison Teachers Incorporated vs. Joint School District No. 8, City of Madison, et al.*, Case No. VIII No. 15210 MP-107, Decision No. 11271 and further prays that the Court stay enforcement of the Order of the Commission during the time required for review of the decision and grant such further relief as may be deemed appropriate.

Dated at Madison, Wisconsin this 13th day of October, 1972.

Respectfully submitted:

CITY OF MADISON

By: */s/ Gerald C. Kops*

GERALD C. KOPS
Assistant City Attorney

STATE OF WISCONSIN)
: ss
COUNTY OF DANE)

Gerald C. Kops, being first duly sworn on oath deposes and says that he is an Assistant City Attorney of the City of Madison, a municipal corporation located at Dane County, Wisconsin; that he has read the above and foregoing Petition and that the same is true of his own knowledge, except as to those matters stated on information and belief, and as to those matters, he believes it to be true.

/s/ Gerald C. Kops
GERALD C. KOPS

Subscribed and sworn to before me
this 13th day of October, 1972.

/s/ Larry W. O'Brien
Notary Public, State of Wisconsin
My Commission is permanent

STATE OF WISCONSIN CIRCUIT COURT
DANE COUNTY

CITY OF MADISON, JOINT SCHOOL DISTRICT NO. 8, CITY OF MADISON, VILLAGES OF MAPLE BLUFF AND SHOREWOOD HILLS, TOWNS OF MADISON, BLOOMING GROVE, FITCHBURG AND BURKE AND ITS AGENT, THE BOARD OF EDUCATION, CITY OF MADISON JOINT SCHOOL DISTRICT NO. 8,

Petitioner,

vs.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION,

Respondent,

MADISON TEACHERS INCORPORATED,

Intervenor Respondent.

MEMORANDUM DECISION

The petitioner in this action pursuant to Chapter 227, Stats., seeks review of a decision and order of the Wisconsin Employment Relations Commission dated September 13, 1972, which determined that said petitioner had committed unfair practices prohibited by sec. 111.70 (3) (a) 1 and 4 of the Municipal Employment Relations Act.

The petitioner (hereinafter "school board") and Madison Teachers, Inc. (hereinafter "MTI") were parties to a labor agreement covering teachers and other employees, which ran from January 1, 1971, to December 31, 1971. Said agreement contained, inter alia, a provision that the school board would bargain exclusively with MTI.

On January 25, 1971, MTI gave the school board timely notice of its desire to modify the existing agreement for the year 1972. Conferences and negotiations between the parties for a successor agreement continued during the year until October 4, 1971. By November, 1971, two primary issues remained unresolved, viz., a fair share agreement and binding arbitration of teacher nonrenewals and dismissals.

In November, 1971, a Mr. Holmquist and a Mr. Reed, both of whom are teachers employed by the school board and both of whom are not members of MTI, drafted a letter addressed to "Dear Fellow Madisonian Educator." Such letter, headed "E. C. - O. L. O. G. Y," meaning "Educator's Choice - Obligatory Leadership Or Goverance by You," asked the addressee to "Save Freedom of Choice" and stated that "A Closed Shop (agency shop) Removes This Freedom." The bottom portion of such letter was in the form of a ballot allowing the addressee to express his opposition to "agency shop." Said letter was mailed on November 14, 1971, to all teachers in the Madison Public School system by Holmquist and Reed. Approximately two hundred replies to such letter were received, the majority of which were favorable to their position on fair share.

On December 2, 1971, a meeting of 14 teachers who wished to work against any fair share agreement resulted in a memorandum entitled "Points of Information" and a petition which were distributed to the teachers employed by the School District.

Prior to the December 6, 1971, school board meeting, Mr. Keith Yelinek, a member of the board, was informed that individuals other than authorized agents of MTI intended to speak at such meeting on fair share. Mr.

Yelinek was presented with copies of the court's decision in *Board of School Directors of Milwaukee v. W.E.R.C.*, 42 Wis. 2d 637 (1968), and he indicated he would relate such information to the board.

Mr. Holmquist appeared at the board meeting held on December 6, 1971, and he was permitted to speak to the board. Mr. Holmquist prefaced his remarks to the board by stating:

> "My name is Albert Holmquist. I reside at 5626 Crestwood Place. I am another teacher. I represent an informal committee of 72 teachers in 49 schools. I would like to inform the Madison Board of Education, as I already have the Madison Teachers Incorporated, about the results of an informational survey regarding one of the thirteen or so items now on the conference table and one of the main items that will certainly be included in some form in the new package."

He then read to the board the text of a petition he had circulated among bargaining unit teachers dated December 6, 1971. In so doing, he stated as follows:

> "To: Madison Board of Education, Madison Teachers Incorporated. We the undersigned ask that the fair-share proposal (agency shop) being negotiated by Madison Teachers Incorporated and the Madison Board of Education be deferred this year. We propose the following: 1) The fair-share concept being negotiated be thoroughly studied by an impartial committee composed of representatives from all concerned groups. 2) The findings of this study be made public. 3) This impartial committee will ballot (written) all persons affected by the contract agreement for their opinion on the fair share proposal. 4) The results of this written ballot be made public.

"We feel this study necessary because neither the board's negotiators who have placed entirely too much emphasis on this one point nor Madison Teachers, Inc. which speaks euphemistically about the 'whole package' and therefore is not issue specific. ... Neither has properly addressed the serious issue of fair share and agency shop. We find much confusion in the proposal as it stands and even more on the part of teachers' interpretations of it. For evidence, 417 teachers from the 31 schools which represents 53% of the total number of these faculties of these schools ... who have called in to this hour have signed the petition on the first day it was taken into their schools. Due to this confusion, we wish to take no stand on the proposal itself, but ask only that all alternatives be presented clearly to all teachers and more importantly to the general public to whom we are all responsible. We ask simply for communication, not confrontation."

At the end of his remarks, Mrs. Doyle, president of the Board of Education, asked Mr. Holmquist, "Do you intend to communicate these petitions to the Board when you have them all?" Mr. Holmquist replied, "Yes."

After the meeting the board went into executive session. As a result of such discussion, the following resolution was adopted:

> "It was moved and seconded to accept the total package as presented including arbitration for dismissal of non-probationary teachers and *not* including agency shop; if the MTI does not accept this as a total package the offer of arbitration is withdrawn."

In later negotiations the board remained adamant in their position and the parties finally accepted such as the Agreement on December 14, 1971.

On January 5, 1972, MTI filed a complaint with the Wisconsin Employment Relations Commission against the board for alleged violations of sec. 111.70 (3) (a) (1) and 111.70 (3) (a) (4), Stats. The Commission issued its Findings of Fact, Conclusions of Law and Order on September 13, 1972. The petition seeking review of such Findings, Conclusions, and Order is presently before the court.

The court is of the opinion that denying a representative of a minority of the bargaining unit employees the right to appear at a public meeting of the board and to speak to the board on mandatory subjects of bargaining does not infringe upon the right of freedom of expression or the right to petition one's government, as guaranteed by the Wisconsin and United States Constitutions.

The Wisconsin Supreme Court in *Board of School Directors v. W.E.R.C.*, 42 Wis. 2d 637 (1968), held that a school board could properly deny the representative of a minority union the right to speak at a public meeting of the school board on negotiable matters and that such denial did not infringe upon the right of free speech as guaranteed by the Wisconsin Constitution.

The court held that a minority union had no right to negotiate with the employer and that, if the employer negotiated with the minority union, that in itself would be a prohibited practice. As the court stated in *LaCrosse County Institution Employees v. W.E.R.C.*, 52 Wis. 2d 295, 300 (1971):

> "The essence of the *Board of School Directors* case was merely that, if a municipality sees fit to bargain, it must do so with the certified representative of the

employees and cannot negotiate with a minority union."

The crux of this case thus reduces to whether Holmquist's "statement" before the board constituted "negotiation" or was merely the giving of a "position statement." This same issue was extensively discussed in the *Board of School Directors* case, supra. The court stated at page 652:

> "If this case involved solely the giving of a position statement at an ordinary meeting of a public body, we would have some dif lty in labeling the conduct 'negotiating.' "

Even though Holmquist's statement superficially appears to be merely a "position statement," the court deems from the total circumstances that it constituted "negotiating." The court in *Board of School Directors*, supra, at page 653 stated:

> "On the other hand, if the minority union representative is permitted to influence the decision of the school board by his argument, then he is truly 'negotiating.' "

In the case at bar, Holmquist in fact desired to have the fair-share proposal deleted from the agreement. In addition, the school district did not remain passive in relation to this matter. When Reed and Holmquist commenced their anti-fair-share campaign, they showed their anti-fair-share document entitled "E. C. - O. L. O. G. Y." to building principals. They also received permission to circulate the "informational letter" to teachers through the teacher mail boxes. They were also permitted to circulate their anti-fair-share petition to teachers in the school buildings. Such permissiveness was

in direct contradiction to Article V, paragraph J, at page 57, and Article V, paragraph K, at page 57, of the negotiated agreement in effect between MTI and the board. Thus, the board's conduct involved more than its permitting Holmquist to speak to it on fair-share. It involved conduct which could only have for its purpose the frustration of the rights of the majority.

The court is also of the opinion that the decision of the Wisconsin Employment Relations Commission is reasonable and is not inconsistent with the requirements of sec. 111.70 (3) (a) (3), Stats. Such decision does not require the employer to refuse to meet its statutory obligations under sec. 111.70 (4) (d), Stats., nor is it contrary to the intent of sec. 111.70 (2), Stats.

Accordingly, the Findings and Order of the Commission are affirmed. Counsel may prepare an appropriate judgment for the court's signature.

Dated: October 2, 1973.

BY THE COURT:

William C. Sachtjen
William C. Sachtjen, Judge

cc: Attys. Kops, Hoornstra,
Kelly, Ruhly

STATE OF WISCONSIN DANE COUNTY
CIRCUIT COURT

[Caption omitted in printing]

JUDGMENT

Circuit Court
Case No. 137-382

The above entitled matter having come on for hearing on the 28th day of August, 1973, at which time it was heard before the court without a jury; Melli, Shiels, Walker & Pease by Joseph A. Melli appearing for the amicus curiae, National Right To Work Foundation; Charles D. Hoornstra, Assistant Attorney General, appearing on behalf of the respondent, Wisconsin Employment Relations Commission; Robert C. Kelly appearing for the intervenor respondent, Madison Teachers Incorporated; and Gerald C. Kops, Assistant City Attorney, appearing for the above-named petitioners; and the court having heard the arguments and considered the briefs of counsel and being duly advised in the premises, and having taken the matter under advisement and having on the 2nd day of October, 1973, filed its decision directing judgment dismissing the petition for review of a certain order of the Wisconsin Employment Relations Commission,

NOW, THEREFORE, IT IS ADJUDGED that the order of the Wisconsin Employment Relations Commission in this matter entered on the 13th day of September, 1972, be, and the same is affirmed; and that the petition of the above-named petitioners for review of said order be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin, this *12* day of *October*, 1973.

BY THE COURT:

/s/ William C. Sachtjen
William C. Sachtjen
Circuit Judge

STATE OF WISCONSIN IN SUPREME COURT

[Caption omitted in printing]

APPEAL from a judgment of the circuit court for Dane county: WILLIAM C. SACHTJEN, Circuit Judge. *Affirmed.*

DAY, J. The question on this appeal is, was it error for the circuit court to affirm the conclusion of the Wisconsin Employment Relations Commission that the school board committed a prohibited labor practice in that it "negotiated" or "bargained" with other than the exclusive bargaining representative of the teachers on matters subject to collective bargaining when it allowed a representative of a minority group of teachers to speak at a board meeting, listened to his statements and received the results of a petition circulated by that group — all concerning matters subject to collective bargaining — when this was done at a regular public meeting of the board?

The appellant City of Madison Joint School District No. 8, including the City of Madison, Villages of Maple Bluff and Shorewood Hills, Towns of Madison, Blooming Grove, Fitchburg and Burke (hereinafter "school district")

operates the school system of said municipalities; the appellant Board of Education of the district is an agent of the district and is charged with the possession, care, control and management of the property and affairs of the school district.

The respondent Wisconsin Employment Relations Commission (hereinafter "WERC") is an administrative body charged with the responsibility of administering statutory policy with respect to both public and private employees.

Madison Teachers, Incorporated (hereinafter "MTI"), intervenor respondent, is a labor organization which was, at the time of the events which give rise to this action, the exclusive majority collective bargaining representative of the teachers of the district.

The Board of Education (board) and MTI were, for the calendar year 1971, parties to a collective bargaining agreement covering wages, hours, and conditions of employment for all bargaining unit personnel, which included all teachers. The agreement terminated on December 31, 1971. Negotiations for a successor agreement began almost as soon as the previous one concluded. Thus, on January 25, 1971, MTI submitted a proposal for a new contract to take effect January 1, 1972. This proposal containeda "fair share" provision, a contractual requirement that all teachers, including those not then members, pay full union dues, *i.e.*, their "fair share" of the costs of collective bargaining.

Such a provision was proposed by MTI the previous year and was rejected by the board. This fair-share provision was discussed throughout the 1971 negotiations and at all times was opposed by the board. Initially, the

board objected because such a provision was then illegal. There were frequent requests by the board for MTI to defer fair share for another year.

On November 11, 1971, legislation (ch. 124, Laws of 1971) became effective which allowed inclusion of a fair-share provision in municipal-employee collective-bargaining agreements. This is now codified as sec. 111.70 (1), Stats., and defined in sec. 111.70(1)(h). Soon thereafter MTI submitted another fair-share proposal to conform to the new law; again it was rejected by the board.

The number of unresolved issues between the parties had been reduced to about 13 by November, 1971. Two of these were considered of overriding importance by both sides: (1) the fair-share provision, and (2) the provision for binding arbitration of non-renewal of teacher contracts and teacher dismissals. The board had opposed both of these issues throughout the negotiations. However, in late October or early November, the chairman of the board's negotiating team indicated, informally and unofficially, to the chairman of MTI's negotiating team that there was "no way" arbitration for dismissals and non-renewals would be accepted by the board, but there was a "distinct possibility" the fair-share provision could be accepted. He said two members of the board said they would approve fair share if MTI would withdraw its arbitration proposal.

On the other hand, at the WERC hearing in this case, the chairman of MTI's negotiating team testified that the union's bargaining strategy was to lead the board to believe that MTI's primary interest was in fair share when in fact it was in arbitration. If this strategem were successful, MTI could at some point offer to "sacrifice" fair share for arbitration and celebrate the result.

On November 14, 1971, Ralph Reed and Albert Holmquist, teachers employed by the district, neither of whom were members of MTI, sent a letter opposing the fair-share provision, which they considered a denial of freedom of choice, to all teachers employed by the district. The letter solicited responses and 200 were received, the majority sympathetic to their position. A meeting of some of these teachers was scheduled for December 2, 1971. Fourteen teachers attended, half of whom were MTI members. They prepared a petition and formulated plans for circulating it in the schools on December 6, 1971. The petition supported a one-year deferral of consideration of fair share. It was intended to present the results of the petition to both MTI and the board at the board's regular public meeting on the evening of December 6, 1971. The petition was circulated in the schools, in non-working areas on non-working time, that day and a letter, also urging deferral of fair share, was distributed to the teachers of two schools through their school mailboxes. The principals of those two schools, agents of the board, knew of the latter activity.

By December 6, 1971, negotiations between the board and MTI had reached an impasse. For the board's regular public meeting that evening MTI had arranged to have pickets present and 300-400 teachers in attendance at the auditorium. MTI's representative John Mathews knew in advance that Messrs. Reed and Holmquist intended to present the results of their petition and speak to the board against fair share. He encountered Mr. Holmquist and Mr. Reed in the auditorium before the meeting was to begin and tried to talk them out of presenting the petition or speaking to the board.

Soon thereafter, Mr. Mathews met a member of the board, Mr. Yelinek, outside. He informed Mr. Yelinek of what Messrs. Reed and Holmquist intended to do that evening and also showed him underlined portions of the *Board of Sch. Directors of Milwaukee v. WERC* (1969), 42 Wis. 2d 637, 168 N.W. 2d 92. Mr. Yelinek responded that he "would take care of it."

Mr. Mathews met Messrs. Reed and Holmquist again, soon after talking with Mr. Yelinek. He again tried, unsuccessfully, to talk them out of presenting the petition and speaking to the board, telling them that the negotiations were delicate and urging them to refrain "or we were going to lose the whole ball game."

At the board meeting, a portion of time was devoted to public appearances. Mr. Holmquist completed a registration form stating that he wished to speak during this period. He did not say on this form what he wished to speak about. Several individuals spoke during this time and then the president of MTI rose and spoke. At the conclusion of his remarks he presented to the board a statement signed by 1300 to 1400 teachers, declaring "We, the undersigned wish the parties to resume negotiations and reach agreement as quickly as possible."

Immediately following this speaker, Mr. Holmquist was allowed to speak. He said

> " 'My name is Albert Holmquist. I reside at 5626 Crestwood Place. I am another teacher. I represent an informal committee of 72 teachers in 49 schools. I would like to inform the Madison Board of Education, as I already have the Madison Teachers, Incorporated, about the results of an informational survey regarding one of the thirteen or so items now on the conference table and one of the main items that will certainly be included in some form in the new package.' "

He then read the petition:

> " 'To: Madison Board of Education, Madison Teachers, Incorporated. We the undersigned ask that the fair-share proposal (agency shop) being negotiated by Madison Teachers, Incorporated and the Madison Board of Education be deferred this year. We propose the following: 1) The fair-share concept being negotiated be thoroughly studied by an impartial committee composed of representatives from all concerned groups 2) The findings of this study be made public. 3) This impartial committee will ballot (written) all persons affected by the contract agreement for their opinion on the fair share proposal. 4) The results of this written ballot be made public.' "

He added:

> " 'We feel this study necessary because neither the board's negotiators who have placed entirely too much emphasis on this one point nor Madison Teachers, Inc. which speaks euphemistically about the "whole package" and therefore is not issue specific ... Neither has properly addressed the serious issue of fair-share and agency shop. We find much confusion in the proposal as it stands and even more on the part of teachers' interpretations of it.
>
> For evidence, 417 teachers from the 31 schools which represents 53% of the total number of these faculties of these schools ... who have called in to this hour have signed the petition on the first day it was taken into their schools. Due to this confusion, we wish to take no stand on the proposal itself, but ask only that all alternatives be presented clearly to all teachers and more importantly to the general public to whom we are all responsible. We ask simply for communication, not confrontation.' "

When he finished, the board president asked Mr. Holmquist whether he intended to communicate the petitions to the board. Mr. Holmquist replied that he did; the petitions, however, were never presented to the board. There was no other exchange between Mr. Holmquist and any member of the board.

After the public meeting, the board went into executive session and considered the unresolved collective-bargaining issues, since a negotiation session had been scheduled for the following day, December 7, 1971. The board adopted the following resolution:

> " 'It was moved and seconded to accept the total package as presented including arbitration for dismissal of non-probationary teachers and *not* including agency shop; if the MTI does not accept this as a total package, the offer of arbitration is withdrawn.' " (Emphasis the board's.)

At the next day's negotiations, the board's representatives opened the meeting with the above-quoted resolution and said, "... This is the deal." After some discussion, MTI conceded and tentative agreement was reached. The final agreement was signed December 14, 1971, with no fair-share provision, but with the arbitration provision.

In January, 1972, MTI filed a complaint with WERC alleging that the board committed a prohibited labor practice when it listened to Mr. Holmquist at its public meeting; this was said to constitute prohibited negotiating with other than the official, exclusive collective-bargaining representative, MTI. The board denied the charge. A hearing was held on February 28, 1972. On September 13, 1972, WERC concluded that the board had

committed the alleged prohibited labor practices and ordered the board to cease and desist from the same.

The board petitioned the Dane county circuit court for review under ch. 227, Stats. MTI intervened. On October 2, 1973, the court entered its written decision affirming the WERC conclusion and order. Judgment affirming WERC and dismissing the petition for review was entered October 17, 1973. The board appeals from that judgment.

The basic question on the appeal is, did the board commit an unfair labor practice under the fact situation outlined above? In addition, other questions have been raised on issues of constitutionality and statutory construction.

It could be argued that as a matter of policy the board should hear not only the majority union, but any minority union groups or ad hoc committee representatives to thereby get a cross-section of all views and ascertain what all employees think of the various issues subject to collective bargaining. Under such an argument the board and its bargaining representatives should listen to and exchange ideas with all these various groups and factions within a collective bargaining unit. But that is not how collective bargaining is to be carried out under our law.

This court has held that the majority organization in a particular labor bargaining unit is, under the Municipal Employment Relations Act (MERA), sec. 111.70, Stats., not only the bargaining representative for the members of that majority organization, but is the exclusive bargaining representative of all the employees, members or non-members, of the bargaining unit. *Board of Sch. Directors of Milwaukee v. WERC, supra,* at 645-647. *Accord, Board of Education v. WERC* (1971), 52 Wis. 2d 625, 191 N.W. 2d 242.

The statute also states that it is a prohibited labor practice for a municipal employer to refuse to bargain collectively with this exclusive majority representative. Sec. 111.70 (3) (a) 4, Stats. Further, it is a prohibited labor practice for the municipal employer "To interfere with, restrain or coerce municipal employes in the exercise of their rights ...," sec. 111.70 (3) (a) 1, one of which is the right "... to bargain collectively through representatives of their own choosing ...," sec. 111.70 (2). In this case, WERC concluded that the board, in allowing Mr. Holmquist to speak and in listening to his statement and his oral presentation of the results of his petition, had committed prohibited labor practices in violation of sec. 111.70 (3) (a) 1 and 4, in that it had violated its duty to bargain in good faith with MTI and had interfered with the rights of employees represented by MTI to bargain collectively through representatives of their own choosing. On this basis, WERC ordered, *inter alia,* that the board:

> "1. Shall immediately cease and desist from permitting employes, other than representatives of Madison Teachers Inc., to appear and speak at meetings of the Board of Education, on matters subject to collective bargaining between it and Madison Teachers Inc."

The WERC decision was affirmed by the circuit court.

The basic question here is whether or not the activities of the board at its public meeting constituted bargaining. The board of education in its brief concedes that bargaining by a minority group of employees with the board is prohibited by our law. In its brief the board states:

> "It may well be because of the public interest in stable labor relations permissible to restrict the rights of a minority group or individual teacher to negotiate with

their employer. However, we submit to prevent an employee from providing information to his employer orally is beyond the scope of permissible restriction of the Constitutional rights of public employees to speak and petition their government." ...

The Board of Education does not contest the assertion that it has an obligation to bargain exclusively with the majority representative of its employees or that a 'fair share' agreement is a matter of mandatory bargaining."

The United States /[1] and Wisconsin/[2] Constitutions protect the rights of individuals to speak and to petition their federal and state governments. But it is well established that these freedoms are not absolute./[3] To the

/[1]The First and Fourteenth Amendments to the United States Constitution, in pertinent part, are:

"Article I.

Congress shall make no law ... abridging the freedom of speech ... or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

"Article XIV.

... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

/[2]The Wisconsin Constitution provides, in pertinent part, in Article I, Sections 3 and 4:

"Free speech; libel. Section 3. Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right, and no laws shall be passed to restrain or abridge the liberty of speech ..."

"Right to assemble and petition. Section 4. The right of the people peaceably to assemble, to consult for the common good, and to petition the government, or any department thereof, shall never be abridged."

/[3]*State v. Becker* (1971), 51 Wis. 2d 659, 664, 188 N.W. 2d 449; *State ex rel. Gall v. Wittig* (1969), 42 Wis. 2d 595, 606, 167 N.W. 2d 577; *State v. Zwicker* (1969), 41 Wis. 2d 497, 509-510, 164 N.W. 2d 512; *State v. Givens* (1965), 28 Wis. 2d 109, 118, 135 N.W. 2d 780.

extent that the WERC and circuit court decisions in this case infringe upon the freedom to speak and to petition the federal and state governments, they are within the limits imposed on the restriction of those rights by United States Supreme Court decisions and the decisions of this court. What is required to overcome the constitutional proscriptions on abridgement of these rights has been variously described as "... a clear and present danger that [the speech] will bring about the substantive evils that [the legislature] has a right to prevent," *Schenck v. United States* (1919), 249 U.S. 47, 52, 39 Sup. Ct. 247, 63 L.Ed. 470, or "... grave and immediate danger to interests which the State may lawfully protect," *West Virginia St. Brd. of Educ. v. Barnette* (1943), 319 U.S. 624, 639, 63 Sup. Ct. 1178, 87 L.Ed. 1628. Somewhat more recently the court has refined this language into a balancing test:

" 'In each case [courts] must ask whether the gravity of the "evil," discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger.' " *Dennis v. United States* (1951), 341 U.S. 494, 510, 71 Sup. Ct. 857, 95 L.Ed. 1137.

This question has been answered by this court and the United States Supreme Court in the field of labor negotiations. In *Board of Sch. Directors of Milwaukee v. WERC, supra,* this court recognized the right of the certified majority union to exclusive negotiating rights with the employer. *Accord, Board of Education v. WERC* (1971), 52 Wis. 2d 625, 633, 191 N.W. 2d 242. The principle of exclusivity, by definition, forbids certain individuals from speaking certain things in certain contexts; the First Amendment rights of those persons are, to that extent, thereby infringed. But the gravity of that evil was considered outweighed by the necessity to avoid the dangers attendant upon relative chaos in labor-management relations.

"The federal labor laws seek to promote industrial peace and the improvement of wages and working conditions by fostering a system of employee organization and collective bargaining.... The collective bargaining system as encouraged by Congress and administered by the NLRB of necessity subordinates the interests of an individual employee to the collective interests of all employees in a bargaining unit." *Vaca v. Sipes* (1967), 386 U.S. 171, 182, 87 Sup. Ct. 903, 17 L.Ed. 2d 842; *cf., Medo Photo Supply Corp. v. NLRB* (1944), 321 U.S. 678, 684, 64 Sup. Ct. 830, 88 L.Ed. 1007; *accord, Texaco, Inc. v. N.L.R.B.* (7th Cir. 1971), 436 Fed. 2d 520, 524.

The question of whether speech in the form of bargaining or negotiating for a labor agreement can be constitutionally restricted to representatives of the majority bargaining unit has been answered in the affirmative. None of the parties to this action disputes that. Now the question is whether the activity herein complained of by MTI, and subsequently proscribed by WERC, qualifies as bargaining and can, therefore, be restricted under the rule of *Board of Sch. Directors of Milwaukee v. WERC, supra*. In that case, Justice Hanley speaking for a majority of this court defined "negotiating" as follows, p. 652:

"Quite obviously, the determination of this issue turns on the interpretation given to 'negotiating.'

'Negotiate' is defined in Webster's New International Dictionary (3d ed.) as:

'... 1: to communicate or confer with another so as to arrive at the settlement of some matter: meet with another so as to arrive through discussion at some kind of agreement or compromise about something: come to terms esp. in state matters by meetings and discussions....' "

In that case, the school board and the majority union were in the midst of negotiations on a new contract. At a public meeting of one of the committees of the school board, a representative of the minority union rose to speak on a matter which was a subject of negotiations. He was denied the right to speak. WERC considered this denial a prohibited practice. The circuit court reversed the WERC decision and was affirmed by this court; this court finding, in effect, that allowing the minority representative to speak on that subject would have constituted prohibited negotiating or bargaining with him. This court had to determine the interpretation to be given to "negotiating" and relied on the definition cited above. This court placed emphasis on the statutory requirement that no final action should be taken on such negotiated matters until they are made public and discussed in an open public meeting./[4] The court said that such "... open meeting is the necessary and final step in the 'negotiation' process between the school board and the majority teachers' union." *Board of Sch. Directors of Milwaukee v. WERC, supra,* at p. 653. Thus, it seems the court considered the school board committee meeting in that case to be a part of the "negotiation process." With the impasse that had been reached in the negotiations in the case before us with the majority union, with several members present at the board meeting, with its pickets present, and its representatives addressing the board on subjects of the collective

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/[4]" '... the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental affairs and the transaction of governmental business.' " Sec. 14.90 (1) Stats. (1967), renumbered as sec. 66.77 (1), Stats. (1973). *See, Board of Sch. Directors of Milwaukee v. WERC, supra,* at p. 650.

bargaining negotiations, that meeting certainly was part of the negotiation process. The board relies heavily on the statement made by this court in that case, in which this court said:

> "If this case involved solely the giving of a position statement at an ordinary meeting of a public body, we would have some difficulty in labeling the conduct 'negotiating.' " 42 Wis. 2d at p. 652.

What was said in the case before us goes beyond the mere giving of a "position statement" because here the statement went to the very heart of the negotiations.

As the trial court in this case pointed out in its analysis of the facts:

> "In November, 1971, a Mr. Holmquist and a Mr. Reed, both of whom are teachers employed by the school board and both of whom are not members of MTI, drafted a letter addressed to 'Dear Fellow Madisonian Educator.' Such letter, headed 'E.C.-O.L.O.G.Y.,' meaning 'Educator's Choice — Obligatory Leadership Or Goverance by You,' asked the addressee to 'Save Freedom of Choice' and stated that 'A Closed Shop (agency shop) Removes This Freedom.' The bottom portion of such letter was in the form of a ballot allowing the addressee to express his opposition to 'agency shop.' Said letter was mailed on November 14, 1971, to all teachers in the Madison Public School system by Holmquist and Reed. Approximately two hundred replies to such letter were received, the majority of which were favorable to their position on fair share....
>
> Mr. Holmquist appeared at the board meeting held on December 6, 1971, and he was permitted to speak to the board....

> Even though Holmquist's statement superficially appears to be merely a 'position statement,' the court deems from the total circumstances that it constituted 'negotiating.' The court in *Board of School Directors*, supra, at page 653 stated:
>
> 'On the other hand, if the minority union representative is permitted to influence the decision of the school board by his argument, then he is truly "negotiating." '
>
> In the case at bar, Holmquist in fact desired to have the fair-share proposal deleted from the agreement...."

We agree with the trial court that this was in fact negotiating and one need only read the Holmquist statement to see that the "information" that was being imparted was a request that the whole fair-share issue be deferred along with a counter proposal as to how the issue should be handled for possible future consideration. It also criticized MTI's handling of the negotiations in this respect.

The statement given by Mr. Holmquist was more than a mere statement of a position; it was an argument for it. Furthermore, though Mr. Holmquist was not speaking for a minority union, as in the case of *Board of Sch. Directors of Milwaukee*, it is obvious he was speaking for an *ad hoc* group which was opposed to including a fair-share agreement in any contract being negotiated at that time.

The board also argues that the WERC order must be invalidated because it is vague; it fails to provide adequate guidelines for compliance with its terms. The WERC order directs the board to cease and desist from permitting employees, other than the representatives of MTI, from appearing and speaking at meetings of the board on

matters subject to collective bargaining. Matters subject to collective bargaining, as opposed to subjects reserved to management, are defined as "wages, hours and conditions of employment." Sec. 111.70(1)(d), Stats. The board argues that "conditions of employment" is constitutionally vague and, thus, the order must be voided.

The board, however, has no standing to raise the question. It has conceded in its brief and at oral argument that the matter spoken of by Mr. Holmquist before the board was a subject of collective bargaining. Thus, whatever the vagaries of the WERC order as it may or may not affect others, it is both a plain fact and conceded by the board that there is no vagueness in that order as it affects the board's conduct here.

> ". . . even if the outermost boundaries of [the prohibition] may be imprecise, any such uncertainty has little relevance here, where appellants' conduct falls squarely within the 'hard core' of the ... proscriptions. ..." *Broadrick v. Oklahoma* (1973), 413 U.S. 601, 608, 93 Sup. Ct. 2908, 37 L.Ed. 2d 830. *Accord, Paulos v. Breier* (7th Cir. 1974), 507 Fed. 2d 1383, 1387, 1388; *Driscoll v. Schmidt* (W.D. Wis. 1973), 354 Fed. Supp. 1225, 1229.

The law is clear that "(o)ne to whose conduct a statute clearly applies may not successfully challenge it for vagueness." *Parker v. Levy* (1974) 417 U.S. 733, 94 Sup. Ct. 2547, 2562, 41 L.Ed. 2d 439. The board has no standing to raise the vagueness claim.

Furthermore, "wages, hours and conditions of employment" is the phrase commonly used to describe what are subjects of collective bargaining. It is used in the NLRA, 29 USC secs. 152(9) and 159(a). Certainly, "(w)ords

inevitably contain germs of uncertainty ...," *Broadrick v. Okla., supra,* at p. 608, but the test to avoid unconstitutional vagueness does not require crystal clarity:

> "There might be quibbles about the meaning of [certain language]; but there are limitations in the English language with respect to being both specific and manageably brief, and it seems to us that although the prohibitions may not satisfy those intent on finding fault at any cost, they are set out in terms that the ordinary person exercising ordinary common sense can sufficiently understand and comply with, without sacrifice to the public interest." *United States Civil Service Commission v. Nat'l Assoc. of Letter Carriers, — AFL-CIO* (1973), 413 U.S. 548, 577-578, 579, 93 Sup. Ct. 2880, 37 L.Ed. 2d 796. *See also, Weber v. State* (1973), 59 Wis. 2d 371, 382, 208 N.W. 2d 396.

We conclude the order of the Wisconsin Employment Relations Commission of September 13, 1972, is not vague.

By the Court. — Judgment affirmed.

STATE OF WISCONSIN: IN SUPREME COURT

[Caption omitted in printing]

DISSENTING OPINION

ROBERT W. HANSEN, J. (*dissenting*). What is wrong with holding that only the spokesman for the designated bargaining agent of the teachers may speak on employment-related school matters at a public meeting of a public school board? What is wrong is that it denies the constitutional assurances as to freedom of speech and petition to individual school teachers and other teacher groups.

The First Amendment to the United States Constitution guarantees that "Congress shall make no law ... abridging the freedom of speech ... or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."/[1] The Wisconsin Constitution assures the right of every person to "... freely speak, write and publish his sentiments on all subjects ..." and to "... petition the government or any department thereof. ..."/[2] The United States Supreme Court has made clear that as a constitutional matter teachers may not be "... compelled to relinquish the First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest in connection with the operation of the public schools in which they work. ..."/[3] These constitutional guarantees protect all citizens, public school teachers included, with the nature of the teaching

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/[1]Amendments to the United States Constitution, art. I, made applicable to states by the "due process" clause of the Fourteenth Amendment. *See Joseph Burstyn, Inc. v. Wilson* (1952), 343 U.S. 495, 72 Sup. Ct. 777, 96 L.Ed. 1098. *See also: Lawson v. Housing Authority of Milwaukee* (1955), 270 Wis. 269, 70 N.W. 2d 605, recognizing such applicability.

/[2]Wisconsin Constitution, art. 1, sec. 3, providing: "Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right, and no laws shall be passed to restrain or abridge the liberty of speech or of the press. ..." And, art 1, sec. 4, providing: "The right of the people peaceably to assemble, to consult for the common good, and to petition the government, or any department thereof, shall never be abridged."

/[3]*Pickering v. Board of Education* (1968), 391 U.S. 563, 568, 88 Sup. Ct. 1731, 20 L.Ed. 2d 811.

profession bringing "... the safeguards of those amendments vividly into operation."/[4]

We deal here with the right of a teacher to speak at a public meeting of a school board on school matters — during the portion of such meeting set aside for appearances by the general public./[5] During such citizens-invited-to-present-points-of-view part of the meeting, the president of the teachers' association that was the sole collective bargaining agent spoke for a fair-share

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/[4]*See: Wieman v. Updegraff* (1952), 344 U.S. 183, 73 Sup. Ct. 215, 97 L.Ed. 216, Mr. JUSTICE FRANKFURTER in concurring opinion (page 195) stating: "By limiting the power of the States to interfere with freedom of speech and freedom of inquiry and freedom of association, the Fourteenth Amendment protects all persons, no matter what their calling. But, in view of the nature of the teacher's relation to the effective exercise of the rights which are safeguarded by the Bill of Rights and by the Fourteenth Amendment, inhibition of freedom of thought, and of action upon thought, in the case of teachers brings the safeguards of those amendments vividly into operation. Such unwarranted inhibition upon the free spirit of teachers affects not only those who, like the appellants, are immediately before the Court. It has an unmistakable tendency to chill that free play of the spirit which all teachers ought especially to cultivate and practice. ..."

/[5]The meeting involved was the regular and scheduled meeting of the board of education of the city of Madison, joint school district No. 8, on the evening of December 6, 1971. A portion of each regular meeting of this board is opened and devoted to appearances by the public, permitting concerned citizens to present their points of view on school matters to the board.

proposal,/[6] and presented a petition or statement signed by between thirteen and fourteen hundred teachers urging continued negotiations and early agreement. Then an individual teacher requested permission to speak, without indicating what he intended to talk about. Given such permission, he stated that he represented "... an informal committee of 72 teachers in 49 schools," urged further study of the fair-share proposal and stated he would submit a petition signed by teachers who favored delay for study. The school board permitted both the association president and the committee spokesman to speak and listened to both when they spoke.

The state employment relations board found that the Madison school board, by listening to the teacher who spoke after the president of the teachers' association had concluded his remarks, had committed a "prohibited practice" in violation of sec. 111.70 (3) (a) (1) and (4), Stats./[7] The employment relations board ordered the school board to "... immediately cease and desist from permitting employes, other than representatives of Madison Teachers Inc., to appear and speak at meetings of

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/[6]Sec. 111.70 (2), Stats., provides the procedure by which a union security agreement designated "fair share" may be established or terminated.

/[7]Sec. 111.70 (3) (a) (1), Stats., provides that it is a prohibited practice for a municipal employer "... (1) To interfere with, restrain or coerce municipal employes in the exercise of their rights guaranteed in sub. (2)." Sub. (2) provides that it is a prohibited practice "... (2) To initiate, create, dominate or interfere with the formation or administration of any labor or employe organization. ..." Sub. (4) provides that it is a prohibited practice "... (4) To refuse to bargain collectively with a representative of a majority of its employes in an appropriate collective bargaining unit. ..."

the Board of Education, on matters subject to collective bargaining. ..." The circuit court upheld such order, and the majority of our court affirms.

The writer sees three constitutional infirmities in the employment relations board's order, all related to the First Amendment and the corollary state constitutional guarantees as to freedom of speech and right to petition for redress of grievances.

THE RIGHT TO SPEAK. When a school board sets aside a portion of its regular meeting as a public forum where citizens generally may state their views on school matters, the invitation and the right to appear go to all citizens, teachers included. The school board is a public body. The meetings are public meetings. Its open discussion periods are just that — open to the public, teachers included. The majority opinion finds the exclusion of teachers or teacher groups, other than the one designated as collective bargaining agent, was here justified and required by the State Municipal Employment Relations Act, which provides for an exclusive bargaining representative for an appropriate bargaining unit./[8] As to an individual's right to speak at a public hearing or a public meeting of a public body, we would see any duties or rights deriving from the Employment Relations Act as limited by rights granted by our constitutions, federal and state. If there is a crunch, it is the statute, not the constitutional right, that must yield. However, in the situation before us, the writer sees no crunch or conflict.

/[8]Subch. IV, secs. 111.70 to 111.77, Stats., the Municipal Employment Relations Act.

The association or union, selected as the bargaining agent for the employees, is the sole bargaining representative of the employees in bargaining sessions between employer and such bargaining agent. These meetings are not public. What the group, selected as sole bargaining agent in the election to select such representative, won was the right to represent the employees in the bargaining unit in bargaining sessions and negotiations with the employer. What it did not win was the right to speak, during a public discussion period, at a public meeting of a public body, with all other voices of individual teachers or groups of teachers to be silenced. The school board here is not required to conduct public discussion periods at its meetings while collective bargaining is going on. It is not required, the writer thinks, to hear any discussion of stated and specified topics or issues that are involved in the collective bargaining negotiations between it and the designated collective bargaining agent. But what it cannot do, much less be required to do, is to permit the representative of the employees for bargaining purposes to speak at a public meeting while a gag is placed over the mouths of all individual teachers or other teacher group representatives. This sauce of right to speak at a public meeting cannot be served to one, without being available to the others. It is true that, as to the right of a minority union to speak at a committee meeting dealing with matters involved in collective bargaining negotiations, this court did deny the right of minority unions to be heard at such meeting./[9] However, in that case, our court held:

/[9] *Board of School Directors of Milwaukee v. WERC* (1969), 42 Wis. 2d 637, 168 N.W. 2d 92. *See also: Board of Education v. WERC* (1971), 52 Wis. 2d 625, 191 N.W. 2d 242.

"If this case involved solely the giving of a position statement at an ordinary meeting of a public body, we would have some difficulty in labeling the conduct 'negotiating' "/[10] In the case now before us we do have "... solely the giving of a position statement at an ordinary meeting of a public body."/[11] Restrictions as to length, relevancy or to "giving of a position statement" raise no constitutional questions. They are all implicit in an invitation to appear at a public discussion at a public meeting of a public board. The writer has no quarrel with the Milwaukee case, as limited. However, the writer sees the exclusivity of bargaining representation in employer-employee relations as not here reaching or including the right of the designated representative to speak at a public forum portion of a school board meeting, with all other teacher voices to be silenced. Actually, the employment relations board order does not deny the right of the individual teacher to speak. It only denies the right of the school board to listen. But the right to speak with no one to listen is hardly what the constitutional guarantees envision or protect. The writer, under these circumstances, sees the right of the teacher to speak and the school board to listen as alike constitutionally protected.

/[10] *Id.* at page 652.

/[11] The teacher whose right to speak is here challenged also stated that he intended to present a petition signed by teachers in the school system. However, the order of the employment relations board holds only that permitting the teacher to speak exceeded the bounds of permissible conduct, apparently conceding that sec. 111.70 (2), Stats., authorizes and requires a municipal employer to receive a petition of employees as to a fair-share agreement.

CENSORSHIP OF CONTENT. As to the brief presentation here made by the individual teacher and spokesman for the informal teachers' committee, the majority finds it to have been "... more than a mere statement of a position; it was an argument for it." Unless a speaker takes a firm stand on both sides of the fence, it is difficult to see where a statement of position would not be for or against a proposal or proposition. Here the teacher who spoke identified himself and then read the text of the petition being circulated which he stated would be filed with the board. The petition asked study by an impartial committee. If this was argumentative, it was only mildly so. But the issue as to content of what was or might be said goes deeper. The majority defends the employment relations board order against the charge of vagueness. It finds no vagueness in the board order as it affects "... the board's conduct here." That is certainly true, but, in the First Amendment context, the question of scope or uncertainty as to future application goes to the chilling effect of the order upon the right of free speech. The employment relations board concluded that, when a teacher asks to speak to the board during a public discussion period at a regular board meeting, the board must inquire as to the nature of the speech. Then, if the topic is a matter subject to collective bargaining, the board must refuse to allow the teacher to speak. What matters are subject to collective bargaining? The statute provides that a municipal employer must bargain in good faith on matters of wages, hours and working conditions./[12] As

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/[12]Sec. 111.70 (1) (d), Stats., provides: " 'Collective bargaining' means the performance of the mutual obligation of a municipal employer, through its officers and agents, and the representatives of its employes, to meet and confer at reasonable times, in good faith, *with respect to wages, hours and conditions of employment.* ..."[Emphasis supplied.]

appellant suggests, certain questions arise. Suppose the teacher wishes to speak on class size or teachers' aides, the establishment of summer programs, school reading projects, in-service training, or the special treatment and handling of problem students. Are these matters subject to collective bargaining on which the board is restricted from receiving information from teachers other than the majority representative of its employees? Nothing in the Municipal Employment Relations Act suggests that a teacher does not have a right to speak at a public meeting on these matters, yet all could be covered or affected by a collective bargaining agreement. It is in this sense that the department order is vague, not meaning that it cannot be understood and applied by this school board to the facts here, but because the difficulty of locating its outer limits will have a chilling effect both on the right of teachers to speak and school boards to listen on topics, arguably relatable to bargaining, but directly concerned with the well-being of school children and the community. The prudent school board would resolve doubts against the right of an individual teacher to speak on marginal or in-doubt topics, and that is what is meant by having a chilling effect. The writer would hold the order, in its scope and breadth, to have a constitutionally impermissible termperature-lowering effect on the exercise of First Amendment rights.

JUSTIFICATION FOR INFRINGEMENT. The majority opinion sets forth the federal and state constitutional guarantees of the rights of individuals to speak and to petition government for redress of grievances. It then concedes: "There can be no doubt that the WERC and circuit court decisions in this case infringe upon those

protected freedoms." Such infringement of a constitutional right, the majority writes and the writer agrees, may be permitted where there is a "... grave and immediate danger to interests which the State may lawfully protect."/[13] The question is whether the gravity of the dangers justifies the admitted infringement./[14] In the case before us, the majority holds, the gravity of infringing upon two rights, assured by federal and state constitutions, is "... considered outweighed by the necessity to avoid the dangers attendant upon relative chaos in labor-management relations." The employment relations board was more restrained, seeing two "salutary purposes" served by its order — *i.e.*, it stabilizes the bargaining relations" and it serves the "unity of collective clout" which "advances the welfare of public employes." How can either statement of the public purpose served withstand the obvious fact that the danger alluded to could be entirely avoided by permitting no discussion at a public appearance portion of a regular school board meeting — by anybody — of specified topics and areas of discussion, announced and stated in advance of the public meeting. That would avoid treating a public meeting of a public body both as a collective bargaining session and as an opportunity for presentation of points of view by members of the public with only individual teachers silenced and not permitted to speak. Even if this individual teacher, speaking for himself or for his informal committee, were

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/[13] *West Virginia State Board of Education v. Barnette* (1943), 319 U.S. 624, 639, 63 Sup. Ct. 1178, 87 L.Ed. 1628. (Quoted in majority opinion.)

/[14] *Dennis v. United States* (1951), 341 U.S. 494, 510, 71 Sup. Ct. 857, 95 L.Ed. 1137. (Quoted in majority opinion.)

permitted to state his or their position during a public discussion period at a regular school board meeting, could grave danger, much less "chaos," be a likely or reasonably predictable result? This is no "shouting Fire in a crowded theater" situation. Any conflict between exclusivity in bargaining and the teachers' rights of free speech can be here entirely avoided by advance listing of topics that no one may discuss during the public-invited period of the school board meeting. The writer sees no reason here for holding that anyone except an individual school teacher or minority teacher group may speak freely on school affairs at a school board meeting. Town meeting type discussions at school board meetings are in the American tradition, but town meetings were open to everyone, not everyone except school teachers. Freedom of speech "... lies at the foundation of a free society,"/[15] and "... speech concerning public affairs is more than self-expression; it is the essence of self-government."/[16] The writer would reverse. As to teacher participation in a public discussion at a public meeting of a public body, the writer finds here no showing of facts present or danger threatened that either requires or warrants denying this teacher and any other teacher so situated, "... the First Amendment rights they would otherwise enjoy as citizens to comment on matters of

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/[15] *Shelton v. Tucker* (1960), 364 U.S. 479, 486, 81 Sup. Ct. 247, 5 L.Ed. 2d 231.

/[16] *Garrison v. Louisiana* (1964), 379 U.S. 64, 74, 75, 85 Sup. Ct. 209, 13 L.Ed. 2d 125.

public interest in connection with the operation of the public schools in which they work...."[17]

I am authorized to state that Mr. Justice Bruce F. Beilfuss and Mr. Justice Connor T. Hansen join in this dissent.

STATE OF WISCONSIN
IN SUPREME COURT

[Caption omitted in printing]

MOTION FOR REHEARING

The Appellants named above, by their attorneys, Henry A. Gempeler, City Attorney, and Gerald C. Kops, Deputy City Attorney, hereby move this Court for rehearing in the captioned matter. The decision herein was filed June 30, 1975.

Dated this 18th day of July, 1975.

/s/ Henry A. Gempeler
Henry A. Gempeler
City Attorney

/s/ Gerald C. Kops
Gerald C. Kops
Deputy City Attorney

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[17] *Pickering v. Board of Education, supra,* footnote 3, at page 568.

PER CURIAM DECISION OF WISCONSIN SUPREME COURT

[Caption omitted in printing]

Motion for rehearing denied without costs — 9/30/75.